

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,432

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED OCT 12 1956

MARY OSIN,

Joseph W. Stewart
CLERK

Appellant,

v.

ROBERT H. JOHNSON, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ward B. McCarthy
Thomas B. Heffelfinger
W. Cameron Burton
John A. Kendrick

1005 Investment Building
Washington 5, D. C.

Attorneys for Appellant

(i)

No. 13,432

APPELLANT'S STATEMENT
OF QUESTIONS PRESENTED

After an appeal has been noted, has the trial court authority to enter an order nunc pro tunc changing the nature and form of the relief granted in the order appealed from?

The pre-trial judge having granted the plaintiff's demand for trial by jury, is it within the power of the judge sitting in the Jury Branch to strike the plaintiff's demand for jury trial?

Was it equitable to place the intervenors in priority to the plaintiff in this property even though they were judgment creditors of Johnson who had swindled them out of their automobiles.

Does a deed which is neither acknowledged or delivered by the grantor, pass title to the grantee or persons claiming under him, even though it may be spread upon the land records of the District of Columbia?

Do Findings of Fact not supported by evidence form a basis for conclusions of law?

Is a deed obtained in violation of the criminal statutes of the District of Columbia void?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 13,432

MARY OSIN,

Appellant,

v.

ROBERT H. JOHNSON,
PERPETUAL BUILDING ASSOCIATION,
SAMUEL SCRIVENER, JR.,
JUNIOR F. CROWELL,
THOMAS LAUGHLIN,
L. A. SINCLITICO,
LEO V. GLORIUS,
BERNARD E. SHERMAN,
ARTHUR L. QUINN, Trustee,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this court is based on the Act of June 25, 1948;
c. 646, 62 Stat. 929, U.S.C.A. Title 28, Sec. 1291.

SUMMARY OF THE PROCEEDINGS

On April 30, 1955 plaintiff filed her complaint against Robert H. Johnson, et al., to declare her deed to Johnson of October 13, 1954 as null and void, her signature having been obtained thereto by fraud, misrepresentation and deceit; to declare certain deeds of trust placed by Johnson on the property to be null and void; to restrain certain of the defendants from foreclosing under Johnson's deed of trust on the property; and for the appointment of a trustee.

Perpetual Building Association and its trustees answered that on or about October 14, 1954 they had given Johnson commitments for two loans, each of \$5,500 on the premises, and that on October 18, 1954 the Land Records of the District of Columbia showing title to the property was in fee simple in Johnson, made two loans secured by deeds of trust.

Perpetual filed a cross-complaint against Johnson.

The defendants Glorius and Sherman answered that they were holders, in due course, without notice of Johnson's notes under the second deeds of trust.

Victor H. Umbricht and Yorguy H. Hakim intervened, claiming to be judgment creditors of Johnson.

Plaintiff took a judgment by default against Johnson, as did appellee, Perpetual (App. 9, 17).

At pretrial, plaintiff amended her complaint by eliminating her demand for an accounting from Johnson, and demanded a jury trial, which was granted by the order of January 6, 1956 (App. 14, 16).

On the 23rd day of February, 1956 the Judge, sitting in the jury branch of the Court granted the defendants' motion to strike the demand for a jury and directed the case to be tried without a jury (App. 17).

The case was submitted to the trial judge only upon the testimony of the plaintiff and her witnesses. Johnson was represented by counsel but did not testify. The trial judge found for the defendants, except Johnson, and in favor of the intervenors.

STATEMENT OF THE CASE

Mary Osin, hereinafter referred to as "plaintiff," in July of 1954, owned premises 1211 and 1213 L Street, N.W., free and clear (App. 37, Exhibit 9) and had them on the market at \$15,950 each (App. 38); she met the defendant, Robert H. Johnson, hereinafter referred to as "Johnson", through a neighbor who recommended him as a licensed real estate broker, the neighbor asking her to give Johnson a chance to sell the property (App. 37); the first time the plaintiff personally met Johnson he represented that he was a licensed real estate broker at which time she told Johnson that she wanted him to sell the property (App. 38); that thereafter Johnson offered to personally purchase the property for \$15,000 each, provided she would take back a first deed of trust (App. 38); that Johnson tendered to her two separate sales agreements dated September 2, 1954, one on each property signed City Mortgage Co., by Robert H. Johnson, (App. 38 and 39, Exhibits 2 and 3); between September 2, 1954 and October 12, 1954, plaintiff had numerous conversations with Johnson regarding his proposed remodeling of the premises and the refusal of the District Government to permit changes (App. 39-40).

On October 12, 1954, Johnson, acting through F. Melvin, Secretary of the City Mortgage Co., applied to Perpetual for loans on the properties, stating they were free and clear of encumbrances (App. 77, Exhibit 10).

Prior to October 13, 1954, she inquired of Johnson's office as to place of settlement and was told that all settlements were made at the District Title Insurance Company (App. 40).

On October 12, 1954 Johnson telephoned plaintiff to come to his office the next day at 1420 K Street, N.W., the office of the City Mortgage Company (App. 40); that upon plaintiff's arrival Johnson was alone in his office and told her he wanted her to sign a sales agreement; that she sat across the desk from Johnson and that he was fumbling with a lot of papers (App. 40-41); that Johnson tendered to her one sales agreement for the two properties at \$15,000 each, payable at \$85 a month on each property, she to take a first trust (App. 41); after reading the top of the agreement, she handed it back to Johnson (App. 41); that Johnson thereafter tendered to her a document partially covered (App. 41); and told her to sign the agreement (App. 42), which agreement was, in reality, a deed from plaintiff to Johnson dated October 13, 1954 (App. 42, Exhibit 4); at the time of the signing of Exhibit #4 she believed it was a sales agreement (App. 43); Johnson called in a Mr. Simmons and a Miss La Viscount, Notary Public, plaintiff saw them sign their names on the first page (App. 43); that she never saw La Viscount sign on the reverse side of the agreement, nor did La Viscount ask her at any time if it was her act and deed or if she acknowledged the document to be her act and deed (App. 43).

Thereafter Johnson gave plaintiff a deed of trust note (App. 44), Exhibit #5) which Johnson told her to keep (App. 44), but which note she deposited with First Federal on the same day (App. 44, Exhibit #6); the next day she advised Johnson that she had deposited the note at First Federal, who acted surprised and told the plaintiff that he thought he was going to make the payments to her (App. 45 and 46).

Early in February 1955, the plaintiff desired to go to Florida and telephoned asking Johnson when the settlement was to take place and he told her to see him the minute she got back and he would settle everything (App. 46).

Plaintiff left for Florida and received a letter from a representative of the Government of the District of Columbia (App. 46 and 23),

as a result of which she wrote letters (App. 46 - 47, Exhibits 7 and 8).

At Johnson's request, in September 1954, she delivered to him her original deeds to the property which she never received back (App. 47).

Plaintiff had had other real estate transactions but had always been represented by a real estate broker (App. 47, 48) with settlements at title companies.

Plaintiff proved that Johnson placed her deed on record; and the execution and recording of Johnson's first and second trusts on the property.

The case was submitted to the trial Court upon the testimony of the plaintiff and her witnesses.

Umbricht and Hakim intervened claiming to be judgment creditors against Johnson.

STATEMENT OF POINTS

1. After the plaintiff entered her appeal on April 16, 1956 from the order of March 21, 1956 the trial court was without authority to change the nature of the form of relief by an order nunc pro tunc.

2. An action in fraud may be tried either at law or in equity but once a jury trial has been granted it may not be withdrawn by the trial court.

3. The intervening judgment creditors of Johnson who had been swindled of their automobiles should not have been placed in priority to the plaintiff in her title to the property.

4. A deed which is neither acknowledged or delivered by the grantor, even though recorded, passes no title to the grantee or those claiming through him.

5. The Findings of Fact, not supported by the evidence, may not be the basis for conclusions of law.

6. A deed obtained in violation of the criminal statutes of the District of Columbia is void.

SUMMARY OF ARGUMENT

The trial judge entered his final judgment on March 21, 1956 from which the plaintiff noted her appeal on April 16, 1956 and thereafter, on April 23, 1956 the trial judge ordered that an amended judgment be entered nunc pro tunc as of March 21, 1956 materially changing the provisions of his order of March 21, 1956. An order nunc pro tunc may not be used to change the nature and form of the relief granted in the original judgment.

The pre-trial judge granted the plaintiff's motion for a trial of the issues before a jury and thus established the law of the case. Thereafter, the judge sitting in the Jury Branch had no right to strike the plaintiff's demand for a jury trial.

The intervenors bargained and sold their automobiles to Johnson, obtaining his notes in full payment. Upon default in payment of the notes they secured default judgments. Such judgments are required by the District of Columbia Code to be enforced by a bill in equity and the action of the lower court placing intervenors in priority of title to the plaintiff in her own property should shock the conscience of this court.

The plaintiff not having acknowledged her deed to Johnson to the Notary Public as her act and deed, even though recorded in the land records of the District of Columbia, passed no title to Johnson or to the defendants who claimed through his title.

The trial court made findings of fact that Osin had gone to Johnson's office for a settlement of the transaction at which time she had received Johnson's promissory note. The court made the further finding

that Johnson had fraudulently induced her to execute the warranty deed by representing to her he would execute in her favor and record a first deed of trust to secure the payment of the purchase price. There being no evidence in the record to sustain the foregoing findings of fact they may not be the basis for a final judgment.

Johnson was indicted, tried and convicted under the District of Columbia criminal statutes relating to false pretenses in securing the deed from Osin, making her deed null and void as to Johnson and those claiming through him.

ARGUMENT

AMENDED JUDGMENT A NULLITY

On March 21, 1956, the trial judge entered his findings of fact and conclusions of law and a judgment from which judgment the appellant noted her appeal on the 16th day of April 1956 (App. 24).

Thereafter, on April 23, 1956, there was entered upon the docket an amended judgment directed to be entered nunc pro tunc March 21, 1956, materially changing the provisions of the prior order (App. 25). Appellant in an abundance of precaution noted an appeal from this order (App. 27).

The amended order is a nullity.

After the appellant noted her appeal on the 16th day of April 1956, the lower Court was without authority to take further action except as was necessary to perfect the record on appeal.

The purpose of an order nunc pro tunc is to correct clerical errors and may not be used to change the nature and form of relief.

30 Am. Jur. Judgments, p. 866, et seq. and cases cited.

THE ORDER OF FEBRUARY 23, 1956 STRIKING PLAINTIFF'S JURY DEMAND IS REVERSIBLE ERROR

At pre-trial, plaintiff amended her complaint by striking her demands for an accounting and demanded a trial by jury upon all issues (App. 14) which over objections (App. 15) was granted by the Pre-trial Judge on January 8, 1956 (App. 16).

Perpetual renewed its objection to a trial by jury to the Judge sitting in the Jury Branch, who by order of February 23, 1956 struck plaintiff's demand for trial by Jury (App. 17).

Issues of fraud may be tried before a jury:

Sovereign Pocohontas Co. v. Bond, 74 App. D.C. 175,
120 F.2d 39

New York Title & Mortgage Co. v. Hutton, 63 App. D.C.
266, 71 F.2d 989

Milson v. Gerstenberg, 43 App. D.C. 165

Magruder v. Montgomery, 33 App. D.C. 133

The order of January 8, 1956 granting a trial by jury became the law of the case and not within the province of the trial judge to overrule:

Fraser v. Doing, 76 App. D.C. 111, 130 F.2d, 617

Alabama Power v. F.P.C., 75 App. D.C. 315, 128 F.2d,
280

South Florida Securities v. Seward, 103 F.2d, 872

Cole v. United States, 127 F.2d 470

Hager v. Hanover Fire, 64 F. Sup. 949

THE SCHEME TO OBTAIN THE DEED BY FRAUD IN ITS EXECUTION

Johnson's scheme to defraud follows the usual fashion of pattern - first, to secure confidence and trust of the victim and then get the victim alone without benefit of advice.

The crucial period covers from September 2 through October 13, 1954 and his use of the City Mortgage Company, its secretary, F. Melvin and Merle La Viscount, its typist and notary public.

Prior to Osin meeting Johnson, she had purchased and sold other properties in the District of Columbia in which transactions she had always been represented by reputable real estate brokers or lawyers in settlements at a title company where she signed the necessary deeds "where they showed me to sign" (App. 51).

Prior to September 2, 1954 the plaintiff's property was upon the market for sale.

About a week before September 2, 1954 a neighbor who resided at 1217 L Street, N.W., highly recommended Johnson as a licensed real estate broker who had succeeded in selling a neighbor's property and asking that Osin give Johnson a chance to sell the property (App. 37).

The first time that Osin met Johnson he represented to her that he was a licensed real estate broker and she authorized him to sell the property (App. 38) when in fact he was not a licensed real estate broker nor had ever applied for such license (App. 87).

On, to wit, September 2, 1954 Johnson told Osin that he liked the property himself and wanted to buy it for himself and tendered to her a sales contract on each of the premises, signed City Mortgage Company by Robert H. Johnson, President (Ex. 2 and 3) which offer was orally accepted (App. 38).

The record indicates that on some unspecified date between September 2, 1954 and October 13, 1954, Johnson suggested to Osin that settlement be had in Johnson's office rather than at a title company, in order that he could save money.

Prior to October 12, 1954 Osin had telephoned to Johnson's office and talked to his secretary to inquire where Johnson made his settlements and was advised that all settlements would be made at the District Title Company (App. 40).

On October 12, 1954 Johnson, in his own name, acting through F. Melvin, Secretary of City Mortgage Company, applied to Perpetual Building Association for loans on each of the two premises (Ex. 10), the application showing the properties free of encumbrances.

On October 12, 1954 Johnson telephoned to Osin to come to his office the next day which she did (App. 39-40).

On arriving at the office of The City Mortgage Company, 1420 K Street, N.W., Washington, D.C. on October 13, 1954, Johnson was alone in his private room, sitting at his desk, and told Osin that he wanted her to sign the sales agreement. On his desk there were a lot of papers. "He was fumbling with a lot of papers there" (App. 40-41). He then tendered to her a sales contract on the premises for \$15,000 each, payable \$85.00 a month, and she to take back a first trust. She read the top part, and, after reading, Osin returned the document to Johnson (App. 41) then "he began explaining what a good reliable man he was in paying his monthly bills, and he would be reliable to pay the \$85.00 a month when he settled it." (Italics ours) Thereupon, Johnson tendered to Osin a paper partly covered (App. 41) and told her to sign the agreement (App. 42). The document that she signed she believed to be the sales agreement of which she had read the first part (App. 43).

After signing the document, Johnson called in a Mr. Simmons and the typist, Miss La Viscount, to come into the room and Osin saw them sign their names on the first page of the document (Ex. 4; App. 43).

Osin did not see La Viscount sign her name on the reverse side of the agreement nor did La Viscount at any time ask her if it was her act and deed if she acknowledged it to be her act and deed (App. 43).

Johnson then gave to Osin the note purporting to be secured by deed of trust (Ex. 5) which Johnson told her to keep and she not personally keeping papers which she thought were valuable, deposited it for collection at the First Federal (Ex. 6; App. 44-45). The next day Osin advised Johnson of her deposit of the note for collection and he acted surprised stating "he thought he was going to make the payments there to me, and then, of course, to the First Federal he would have to go down there" (App. 45).

On October 18, 1954 Johnson gave his two notes to Perpetual secured by deeds of trust on the property (Ex. 11, 12, 15, 16). On the 25th day of January 1955 Johnson executed his notes secured by second deeds of trust on the property (Ex. 20, 21, 23, 24).

In November and December of 1954 and January and February of 1955 Johnson made four payments on the Osin note at the First Federal Savings (Ex. 5, App. 108).

Early in February of 1955 Osin decided to go to Florida and not having heard anything further from Johnson, telephoned Johnson advising that she was about to go to Florida and asking when the settlement was going to take place at which time Johnson advised her "that would be fine, and he said just to 'come to see me the minute you get back and I will settle everything' " (App. 46).

Osin denied that on October 13, she had gone to Johnson's office for the purpose of settlement, "He did not state that. He had some papers he wanted me to sign - some papers he had had prepared and he wanted me to sign." (App. 52)

In response to questions by the Court Osin testified that she had gone to Johnson's office on October 13, 1954 because "he said he had

some papers for me to sign - some papers he had prepared - relating to the sale of the house. I had never been there to sign anything before. I had never signed any sales agreement whatsoever. "

"Q. What you thought you were going to do was to go there to sign some papers relating to the sale of these two pieces of property?

A. To the sale, that's correct. I had never signed anything before." (App. 53)

Between September 2 and October 13, 1954 Johnson had obtained the keys to the premises of Osin's and received her permission to collect the rents (App. 70-73).

On October 18, 1954 Johnson on the letterhead of City Mortgage Company, directed the District Title Company to pay to City Mortgage Company \$275.00 commission in connection with the settlement of Perpetual's loan "on my premises 1211-13 L Street, N.W." (Ex. 19) which amount was paid by the Title Company (Ex. 17), Johnson receiving \$10,530.11 (Ex. 18), both items appearing on the settlement sheet (Ex. 20).

THE DEED FROM OSIN TO JOHNSON OBTAINED IN VIOLATION OF THE DISTRICT OF COLUMBIA CRIMINAL STATUTES IS VOID.

The defendant, Johnson, was convicted of a felony on November 7, 1955, in Criminal Case No. 629-55 in the United States District Court for the District of Columbia for obtaining the deed from the plaintiff under D.C. Code 1951, 22-1301, False Pretenses.

"Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance or real or personal property, or the signature of any person, as maker, indorser or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any

other evidence of indebtedness, and whoever fraudulently sells, barter, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense, shall, if the value of the property or the sum or value of the money or property so obtained, procured, sold, bartered, or disposed of is \$50 or upward, be imprisoned not less than one year nor more than three years; or if less than that sum, shall be fined not more than \$200 or imprisoned for not more than one year, or both."

Plaintiff testified that on October 13, 1954, Johnson in his office tendered to her a single sales contract covering both properties which after she read she returned to Johnson; Johnson thereafter tendered to her a document which she believed to be the sales contract and which Johnson represented to her to be the sales contract, partially covered, told her to sign. She further testified that she had no intention on that date of executing a deed to Johnson of her property.

Oklahoma has an almost identical statute which reads:

"Every person who, by any false representations, artifice or deceit, procures from another his signature to any instrument, the false making of which would be forgery, which the party signing would not have executed had he known the facts and effect of the instrument, is guilty of forgery in the second degree". 21 O.S. (1941) 1593.

Like under our statute above quoted, conviction under the Oklahoma statute is a felony.

The Oklahoma courts, under the facts here, have uniformly held that such deed is void and that the same though recorded in due form, is ineffective as a muniment of title even as to a subsequent purchaser in good faith, for value, without notice. Baldrige v. Sunday, 176 Pac. 404; Turner v. Nicholson, 115 Okla. 156, 241 Pac. 750; Julia Oil & Gas Company v. Cobb, 262 Pac. 650; Pittsburgh Coal & Mining Company

v. Wright, 253 Pac. 487; Prather v. LaRue, 191 Pac. 2, 214; Kline v. Meuller, 276 Pac. 200.

It is respectfully submitted that this Court should declare that the plaintiff's deed to Johnson was null and void not only as to Johnson but to the remaining defendants below.

RIGHTS OF THE INTERVENORS IN THE PROPERTY AS AGAINST PLAINTIFF.

The action of the trial court in determining that the intervenors, Umbricht and Hakim, judgment creditors against Johnson, had valid liens against the property, junior to the first and second deeds of trust but superior to the plaintiff, was erroneous and unequitable.

D. C. Code (1951), Sec. 15-103, provides in part:

"Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered, every judgment of the Municipal Court when docketed in the Clerk's office of the District Court of the United States for the District of Columbia, * * * shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree * * * in any lands, tenements, or heriditaments in the District, whether such estates be in possession or be reversions or remainders, vested or contingent, but such liens or equitable interest shall be enforced by bill in equity.
* * * * (italics ours)

Since judgment liens must be enforced in equity, an examination of the pleadings wherein Umbricht and Hakim obtained default judgments against Johnson becomes of importance.

In Umbricht's suit, No. M 7187-55 in the Municipal Court, filed March 8, 1955, Umbricht bartered and sold an "Olds-53-88-4 door Sed. U.S.D. Eng. #538 M 61606-3673" automobile to the defendant Johnson on January 26, 1955, taking as payment Johnson's note dated January 26, 1955 in the amount of \$1,875.00, payable on or before February 28, 1955.

The complaint alleges that the note was overdue and unpaid. Johnson filed an answer in proper person. The original note as filed bears the notation "2/2/55 \$400 - paid by Mr. Johnson". Default judgment was entered on March 31, 1955 for \$1,475.00.

In Hakim's suit, No. 771-55 filed in the District Court of the United States for the District of Columbia, on February 23, 1955, Hakim bartered and sold a "Cad. 54-6267 Eng. 5462-15807-4476 Ser. # Conv cpe" automobile to the defendant Johnson on February 11, 1955, taking as payment Johnson's note dated February 11, 1955 in the amount of \$4,500.00 payable on or before February 17, 1955. The complaint alleges that the note is overdue and unpaid. Default judgment was entered on May 4, 1955.

It should be noted that the transactions of Umbricht and Hakim with Johnson both were subsequent to October 14, 1954, the date of plaintiff's alleged deed to Johnson.

That Johnson is a convicted swindler is a matter of record in this case; that Johnson obtained title to the plaintiff's property by fraud cannot be denied, nor can it be denied that Johnson obtained the intervenors' automobiles with intention to defraud them.

The plaintiff never knowingly did any act which caused either of the intervenors in their dealings with Johnson to do or refrain from doing any act.

Plaintiff and intervenors have but one thing in common, that is, they were both defrauded by Johnson, and it shocks the conscience that a court of equity would place the intervenors in priority over the plaintiff in her own property simply because they reduced their claims against Johnson to judgment, prior to the time plaintiff's complaint to set aside her deed to Johnson was heard. The position of an intervenor is set forth in the Appendix at pages 100, 107.

HORVATH v. NATIONAL MORTGAGE COMPANY, ET AL.,
238 MICH. 354, 213 N.W. 202, 56 A.L.R. 578.

The principle of law, that a valid signature to a deed obtained by fraud, deceit and/or trickery, is forgery, and the deed, therefore void, is new and novel in this jurisdiction. Elsewhere, the leading case appears to be the one cited above and, because of a similiarity of facts, should be most persuasive here.

A Sheppardizing reveals that the Horvath case decided by the Michigan Supreme Court in 1927, upon the facts of the case, to be universally accepted by the courts throughout the country.

The Horvath case stands for three propositions of law:

1. The signature to a deed which is not simulated, but obtained by fraud, is forgery.

2. No one can claim as a bona fide holder, under a forged deed, against the person whose name has been forged or his heirs.

3. A forged deed will be set aside at the suit of one whose name has been forged as against the purported grantee, his mortgage, or grantee and an account awarded for rents received by the latter.

Since the facts of the Horvath case and the case here under consideration are so nearly identical we set them forth in parallel:

The Horvath Case

Horvath owned two houses and lots in Detroit, Michigan

Entirely ignorant of business matters

Osin

Osin owned two houses and lots in the District of Columbia (App. 36)

Relied upon lawyers and licensed real estate brokers with settlements at Title companies (App. 47-52)

The Horvath Case

Vasvary, an educated business man, represented himself to be of large means and influence.

Vasvary, was to manage the property

Vasvary obtained a power-of-attorney

Thereafter, Horvath was called to Vasvary's office, where she signed certain documents. Vasvary procured a warranty deed from Horvath to her property

Vasvary executed mortgages and warranty deed and took back a sales contract with himself as grantee.

Vasvary was represented by counsel and did not appear personally and testify. The value of the property was \$30,000

The trial court found that the deed to Vasvary was void it having been obtained from the plaintiff by trickery; the deed to the National Mortgage Company was merely a mortgage and that company was entitled to a lien upon the property for the amount of its disbursements. The court also sustained the validity of the mortgage.

Osin

Johnson was introduced by a neighbor who represented him to be a licensed real estate broker and Johnson represented himself to be a licensed real estate broker (App. 37-8)

Johnson had the keys; began to collect rents after Sept. 2, 1954, and before October (App. 70-73)

Johnson tendered two separate sales contracts, one for each building signed by City Mortgage Company by himself as President (Ex. 2, 3)

Osin called to Johnson's office on October 13, 1954 and was presented with one single sales contract for both properties which she signed thinking, as was represented to her by Johnson, it was a sales contract (App. 40-42, 51-53, 43-44, 49-52, 58)

Johnson executed notes secured by first and second deeds of trust on each of the premises (Ex. 11-12, 15-16, 20-21, 23-24)

Johnson did not testify but was represented by counsel. The value of the property was \$30,000. In addition thereto, Johnson was permitted a judgment by default to be taken against him (App. 35; Ex. 2, 3, App. 9)

The trial court cancelled and set aside Osin's deed to Johnson as of the date of his order; sustained the first and second mortgages; directed the intervenors to be held in priority to Osin (App. 22)

The Horvath Case

Plaintiff and the National Mortgage
Company appealed

Osin

The plaintiff, Osin, only appealed
(App. 24)

"The first question to be considered relates to the deed from the plaintiff to Vasvary. Was it a forgery? In determining this question we have not the benefit of the testimony of Mr. Vasvary. He appeared at the hearing only by counsel, * * * *

It is not necessary to recite the methods he used in dealing with her. It is conclusive that he tricked her into signing this deed. The circuit judge so found. No other conclusion is possible.

In view of this finding, the case before us is not one of so-called 'actual forgery,' that is, where the signature to an instrument is simulated, but is one where a genuine signature is procured by fraud. Is the latter in law a forgery, and, if it is, does it operate to defeat the rights of subsequent bona fide holders? On this question there is much conflict in the authorities. In many jurisdictions it is held that the procuring of a genuine signature to a deed by fraud does not constitute forgery. Our court has taken a different view, as an examination of the following cases will show: Gibbs v. Linabury, 22 Mich. 479, 7 Am. Rep. 675; Anderson v. Walter, 34 Mich. 113; Crawford v. Hoeft, 58 Mich. 1, 23 N.W. 27, 24 N.W. 645, 25 N.W. 870; McGinn v. Tobey, 62 Mich. 252, 4 Am. St. Rep. 848, 28 N.W. 818; Beard v. Hill, 131 Mich. 246, 90 N.W. 1065. The doctrine of these cases was first announced by this court more than fifty years ago, and has never been overruled, though it is at variance with the decisions of many other jurisdictions. See annotation to Austin v. State, 14 A.L.R. 311. The case of McGinn v. Tobey, 62 Mich. 252, 4 Am. St. Rep. 848, 28 N.W. 818, is more applicable. In that case McGinn was tricked into signing a deed by one Navin. McGinn thought that he was signing a lease. His signature on the deed was genuine, but was procured by trickery. The court held that it was a forgery. Justice Morse, who wrote the opinion said:

'But we consider this deed clearly a forgery, under the best definitions of that offense. Bishop defines 'forgery' to be 'the false making or materially altering, with intent to defraud, of any writing, which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability.' 2 Bishop, Crim. Law, 7th ed. Sec. 523. It is the 'fraudulent making and alteration of a writing, to the prejudice of another man's rights.' 4 Bl. Com. 247. The signature to this instrument is genuine, but the body of the deed is false, and the signing of complainant's name, without knowledge of such falsity, cannot cure it and make it a true and valid instrument in the hands of anyone.'

'It is very evident that the deed of these premises to Navin was not in fact the deed of the complainant. He never meant to execute a deed, and never knew that he had executed one until confronted with his signature to the same, after Navin had gone away to escape arrest.'

'In the instant case the plaintiff never meant to execute a deed to Vasvary. She was not asked to do so. There was no talk between them concerning a deed. No one testifies that she signed it. Her signature was proven on the hearing by the testimony of handwriting experts. If she signed the deed it was at the same time that she signed the letter appointing Vasvary her agent. Through some clever manipulation of the papers by Vasvary, she evidently signed the deed. He is the only person who knows how it was done, and he declined to testify. We can see no reason for any distinction between the act of simulating a signature and procuring the signature as Vasvary did in this case. The effect is the same. The deed was in law a forgery. And those who subsequently innocently acquired interests under the forged instrument are in no better position as to title than if they had purchased with notice. Crawford v. Hoeft, 58 Mich. 1, 23 N.W. 27, 24 N.W. 645, 25 N.W. 567, 26 N.W. 870. 'There can be no such thing as a bona fide holder under a forgery, whose good faith gives him any rights against the party whose name has been forged on his heirs.' Austin v. Dean, 40 Mich. 386; Lee v. Kellogg, 108 Mich. 535, 66 N.W. 380.

* * * * *

"In view of the conclusion we have reached, the plaintiff's property should be restored to her; the mortgage to defendant, James Cash, the deed to defendant National Mortgage Company, and its contract with Vasvary are void and should be set aside; and the National Mortgage Company should account to the plaintiff for the rents which it has received from her property.

"A decree will be entered in this court in accordance with this opinion. The plaintiff will have costs against the National Mortgage Company." (*Italics ours*).

See also the following cases which support our contentions:

Turner v. Nicholson (1925), 115 Okla. 156, 241 Pac. 750.

Julia Oil and Gas Co. v. Cobb (1927), 128 Okla. 260, 262 Pac. 650.

Baldrige v. Sunday (1918), 176 Pac. 404

McGinn v. Tobey (1886), 28 N.W. 818

Wright v. Bracker (Florida - 1940), 198 So. 88

Woodridge v. Powers, (Okla. 1936), 61 Pac. 2d, 734, 178 Okla. 56

Andrea v. Hoffman (1918), 81 W. Va. 620, 95 S.E. 84

Lincoln Bldg. Association v. Cohen (Ky. 1942), 165 S.W. 2d, 959, 292 Ky. 234

Hegeman v. Fetty (Ind. 1937) 7 N.E. 2d 518, 103 Ind. Ap. 291

It is urged that this Court follow the holding of the Michigan Supreme Court and other cases cited.

HAVING BEEN NEITHER ACKNOWLEDGED NOR DELIVERED, THE DEED FROM OSIN TO JOHNSON WAS A NULLITY.

D.C. Code, 1951-45 - 106 provides:

"No estate of inheritance, or for life, or for a longer term than one year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor, or declarant, or by will."

Section 45-301 prescribed the form of instruments.

Section 45-402, provides:

"Acknowledgment of deeds may be made in the District of Columbia before * * * any notary public * * * and the certificate of the officer taking the acknowledgment shall be to the following effect:

I, A.B. a Notary Public in and for the District of Columbia, do hereby certify that C.D., party to a certain deed bearing date of the ____ day of _____ and hereto annexed, personally appeared before me in said District, the said C.D. being personally well known to me as (or approved by the oath of several witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed. Given under my hand and seal this ____ day of _____.

(A. D.)

Seal."

Sec. 45-501 provides as to the effective date of the deed.

Sec. 45-502 provides the first deed recorded as priority.

Sec. 45-503 provides that instruments not executed or acknowledged according to law shall not be recorded, in the following language:

"The recorder shall not accept for record or record any instrument which shall not be executed and acknowledged agreeably to law by the person or party therein granting or contracting with respect to his right, title, or interest in the land therein described. "

The plaintiff testified that on October 12, 1954 Johnson telephoned her to come to his office the next day (App. 12).

Plaintiff's Exhibit No. 10 was Johnson's application dated October 12, 1954 to the Perpetual Building Association for loans upon the two properties, stating that they were free and clear of incumbrances and signed by F. Melvin, Secretary of the City Mortgage Company.

The plaintiff testified that on October 13, 1954 in the office of the City Mortgage Company, Johnson represented to her that it was necessary for her to sign a sales agreement; that Johnson tendered to her a single sales agreement for both properties which, after she had read it, she returned to him. (App. 41)

She testified that Johnson passed back to her a paper partially covered and "he told me to sign it. To sign the agreement"; that she thought the paper tendered to her and which she signed was the sales agreement which she had just seen and read, for the two houses.

The plaintiff testified that thereafter Johnson called in a Mr. Simons and a Miss La Viscount and she saw them sign their names on the first page of the document.

The plaintiff's testimony with reference to Miss La Viscount, the notary was:

"A. He called the typist, she was sitting in the next room, Miss La Viscount, she came in.

"Q. Did she come into the room?

"A. Yes, she did.

"Q. What did she do when she came into the room?

"A. She signed down there.

"Q. On the front page of it?

"A. Yes, sir.

"Q. Now, did you at any time ever see her sign on the reverse side or the back of this agreement?

"A. No, sir.

"Q. Did Miss La Viscount ever at any time ask you if it was your act and deed?

"A. No, sir.

"Q. Did she ever ask you if you acknowledged this to be your act and deed?

"A. No, sir." (App. 43)

The witness Rutgers, an investigator, District Government, Department of Occupations and Professions, testified that in the months of March and April, 1955 in connection with his official duties, he was investigating the defendant Johnson in two cases, one of them being 1211 and 1213 L Street, N.W. (App. 86); that at that time Johnson was not a licensed real estate broker and had never applied for such license in the District of Columbia (App. 87).

The witness Rutgers further testified that during his investigations and while Johnson was under arrest, Johnson admitted that he had stolen Miss Osin's property (App. 91). Johnson named all of his associates at City Mortgage Company, at that time, as having been involved (App. 91); and that La Viscount, Newton (Nupin) and Melvin were employed by the City Mortgage Company on October 13, 1954 (App. 91-92).

It was stipulated that if called, Lt. Higgins and Sgt. Barkley of the Metropolitan Police Department (App. 90) they would "testify or just corroborate the statements by Mr. Rutgers that he was present when Johnson made the statement that he stole the property, and that others were involved in it with him." (App. 99).

While La Viscount's certificate of acknowledgment is prima facie evidence or proof of the facts it contains, yet that acknowledgment can

be impeached for fraud but the evidence of fraud must be clear and convincing. Ford v. Ford, 27 App. D.C. 401.

In an action which challenges conduct of a public officer, the presumption is indulged in his favor that his official duties were properly performed, but the presumption disappears as soon as substantial countervailing evidence is introduced. Stone v. Stone, 78 U.S. App. D.C. 5, 136 F.2d 761.

The situation here presented for the determination of this Court is most aptly stated in 1 Am Jur. Acknowledgments, p. 377:

"Where Fact Of Acknowledgment Is Denied. —

A particular situation is presented where the fact of acknowledgment is denied, it being alleged that the party never appeared before the officer, or make any acknowledgment at all. Cogent reasons, as previously stated, favor the protection of innocent persons who rely upon certificates of acknowledgments. On the other hand, it shocks the conscience to suppose that property owners may be defrauded merely by false personation or by procuring the collusion of an unscrupulous officer.

The balancing of the convenience leads to the conclusion that where there was no appearance before the officer and no acknowledgment are made, this may be shown in disproof of the certificate, even against innocent persons who were relying on the recitals thereof. There is a wide distinction between this and the admission of an appearance before the officer, but a denial of the appearance of the material incidents recited in the certificate. In the latter cases it is generally held that the recital in the certificate can only be impeachable for imposition, and then only if the knowledge or notice of the fraud can be brought on to the grantee. The rights of property are too sacred to allow them to be swept away without the knowledge of the owner. Furthermore, caveat emptor.

"It is immaterial whether the act of taking and certifying the acknowledgment is regarded as judicial or not, for if it is judicial, there is no jurisdiction and the certificate may be proved to be void by any satisfactory evidence." (Italics ours).

We have set out in verbatim all of the plaintiff's testimony with reference as to lack of acknowledgment, and direct the court's attention to the fact that upon cross-examination not one question was directed to the plaintiff concerning her testimony that she had not acknowledged to La Viscount, the notary public, that the instrument was her act and deed, although she was extensively cross-examined as to her prior experience of buying and selling real estate and settlements thereon, in the District of Columbia, her dealings with Johnson, the circumstances under which her signature was obtained to the deed, and her testimony in Johnson's criminal trial.

Johnson, in addition to having been convicted in the criminal trial, permitted a judgment by default to be taken against him (App. 9) and though represented by counsel at the trial (App. 35) he did not testify.

Interchangeably, as it suited his convenience, in his scheme to defraud, Johnson either used his own name or the City Mortgage Company (Ex. 2 and 3) or the employees of the City Mortgage Company. On October 12, 1954, operating through F. Melvin, Secretary of the City Mortgage Company, he applied to Perpetual for loans upon the properties in his own name, stating that they were free and clear of incumbrance (Ex. 10).

This case differs from Ford v. Ford, 27 App. D.C. 401, 411, in which case the good reputation of the Notary Public who certified to the acknowledgment of the deed was fully proved.

Here, the Notary, La Viscount, was an employee of the City Mortgage Company and Johnson named all of his associates at the City Mortgage Company as being involved (App. 91, 99).

If the deed in question was not acknowledged by the plaintiff to the notary public, as her act and deed, it would be void under the provisions of the District of Columbia code quoted above and there could have been no valid or binding delivery thereof by the plaintiff to Johnson. The

deed would be void as to Johnson and as to the defendants herein who claim their liens upon the property under and through Johnson's title of record.

While the recorder of deeds has no jurisdiction to pass upon the validity of instruments presented to him for record (Danzy v. Clark, 24 App. D.C. 47) the recording of an instrument that is not permitted by law to be recorded or that is not proved for record as required by law, is constructive notice to no one (Clark v. Harmer, 5 App. D.C. 114).

This case was decided by the trial court upon the testimony of the plaintiff and her witnesses, the defendants declining to offer any testimony (App. 100).

The plaintiff's testimony is positive that she did not acknowledge the deed to the notary public. It is uncontradicted since the defendants declined to cross-examine her as to this testimony and the defendants offered no testimony. Her testimony is not inherently improbable because of Johnson's admissions that his associates at City Mortgage Company were involved.

Johnson did not testify in the case, but permitted a judgment by default to be entered against him. From this it may be legally inferred that had he testified his testimony would not have contradicted that of the plaintiff, because the result of his failure to plead is in law an admission of the allegations of the complaint.

That the trial court refused to believe and accept the plaintiff's testimony (App. 102, 104) is contrary to the decision of this Court in Stone v. Stone (1943), 78 U.S. App. D.C. 5, 136 F.2d 761, a case involving fraud and a challenge to the conduct of a public officer, where the court said, at page 8:

"In this case there was positive testimony, uncontradicted, and not inherently improbable. Neither a jury nor a Judge is at liberty to disregard such evidence (citing Walker v. Warner, 31 App. D.C. 76, 87) ' * * * where the testimony is all one way, and is not immaterial, irrelevant, improbable, inconsistent, contradicted, or discredited, such testimony cannot be disregarded or ignored by Judge or a Jury, and if one or the other makes a finding which is contrary to such evidence, or which is not supported by it, error results for which the verdict or decision, if reviewable, must be set aside. To hold otherwise would be best triers of the facts in cases subject to review with authority to disregard the rules of evidence which safeguard the liberties and estate of a citizen. Kelly v. Jackson, 6 Pet. 622, 8 L. Ed. 523' "

FINDINGS OF FACT NOT SUPPORTED BY EVIDENCE FORM NO BASIS FOR CONCLUSIONS OF LAW.

The fourth Finding of Fact states in part, that plaintiff "on October 13, 1954 went to defendant Johnson's office at 1424 K Street, N.W., for settlement of the transaction".

In the Finding of Fact No. 6, the Court stated:

"The plaintiff, at the time of settlement received from Johnson a promissory note." (App. 19)

The plaintiff's testimony was to the contrary. There is no testimony that on October 13, 1954 there was any conversation between Osin and Johnson relative to a settlement. Her testimony was that she went to the defendant's office only to sign some papers which he had prepared for her and that she had never signed any papers in connection with the sale.

Her testimony is that on October 13, 1954 when she went to Johnson's office he told her he wanted her to sign a sales contract (App. 40); that he showed to her a sales contract (App. 41); that she went to his office because "he said he had some papers for me to sign * * * some

papers he had prepared * * * relating to the sale of the house. I had never been there to sign anything before. I had never signed any sales agreement whatsoever." (App. 53)

Osin testified there was no settlement (App. 53):

"There was no settlement or anything to show it was a settlement or it didn't look like a settlement. There was no settlement sheet there (App. 54)."

Furthermore, the plaintiff testified early in February 1955 prior to leaving for Florida she phoned Johnson as to when a settlement would take place, who replied to "come to see me the minute you get back and I will settle everything." (App. 46)

In the Finding of Fact No. 5, the Court said:

"Defendant Johnson falsely and fraudulently induced plaintiff to execute such special warranty deed by representing to her that he would execute in her favor and duly record a first deed of trust to secure the payment of the purchase price." (App. 18)

There is no testimony in the record that there was any conversation between Osin and Johnson on October 13, 1954 with regard to either Osin executing a deed or Johnson executing and recording a first deed of trust.

Plaintiff's testimony was that she expected Johnson at the time of settlement to record a deed of trust (App. 55, 67).

CONCLUSION

It is respectfully urged that this court remand this cause to the District Court with directions to order that plaintiff's deed to Johnson dated October 13, 1955 and recorded in the land records at Liber 10289 at folio 275 be set aside and declared null and void from the date of its recording; that the District Court further order that the deeds of trust placed upon the property by Johnson be declared null and void from the date of their recording and to further order that the intervening judgment creditors have no right, title or interest in the property.

Respectfully submitted,

Ward B. McCarthy

Thomas B. Heffelfinger

W. Cameron Burton

John A. Kendrick

1005 Investment Building
Washington 5, D. C.

Attorneys for Appellant

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JOINT APPENDIX

PLEADINGS AND DOCUMENTARY EVIDENCE

161

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY OSIN)
1507 Meridian Place, N. W.)
Washington, D. C.)
Plaintiff)

vs.)

Civil Action
No. 1940-55

ROBERT H. JOHNSON)
District Jail)
Washington, D. C.)

PERPETUAL BUILDING ASSOCIATION)
11th & E Streets, N. W.)
Washington, D. C.)

SAMUEL SCRIVENER, JR.)
c/o THE PERPETUAL BUILDING ASSOCIATION)
11th & E Streets, N. W.)
Washington, D. C.)

JUNIOR F. CROWELL)
c/o THE PERPETUAL BUILDING ASSOCIATION)
11th & E Streets, N. W.)
Washington, D. C.)

THOMAS LAUGHLIN)
c/o District Title Company)
1413 Eye Street, N. W.)
Washington, D. C.)

L. A. SINCLITICO)
c/o District Title Company)
1413 Eye Street, N. W.)
Washington, D. C.)

MARY E. DUNNIGAN)
1424 K Street, N. W.)
Washington, D. C.)

LEO V. GLORIUS)
1129 Vermont Avenue, N. W.)
Washington, D. C.)

Defendants)

[Filed Apr. 29, 1955]

COMPLAINT TO SET ASIDE DEED; FOR INJUNCTIVE RELIEF,
ACCOUNTING AND OTHER RELIEF

1. Jurisdiction of this court is based upon Title 11, Section 306 et seq of the D. C. Code (1951) and the amount in controversy exceeds the sum of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

2. Plaintiff is a citizen of the United States, a resident of the District of Columbia and the defendants all are citizens of the United States and are either residents of the District of Columbia or do business within the District of Columbia.

162 3. For more than ten years prior hereto the plaintiff has been the equitable and record owner of a certain parcel of real estate situated in the District of Columbia known and described as Part of Lot 2 in Square 283 improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C.

4. In the summer of 1954, the plaintiff desired to sell the above real estate and placed it in the hands of certain agents for the purpose of sale; that thereafter she was introduced to the defendant, Robert H. Johnson, who represented himself to her as being a licensed real estate broker in the District of Columbia when in fact he was not and she placed the property with him for sale.

5. Thereafter the defendant, Johnson, offered to buy for himself the above described real estate for the sum of Thirty Thousand (\$30,000.00) Dollars with no cash payment, the payment of the price to be by a note in the sum of Thirty Thousand (\$30,000.00) Dollars to be secured by deferred purchase money trust on the property sold with monthly installments of One Hundred Seventy (\$170.00) Dollars with interest at five (5%) per cent, which agreement the plaintiff orally agreed to accept.

6. Thereafter the defendant, Johnson, without the knowledge or consent of the plaintiff on, to-wit, October 11, 1954, received a commitment from the defendant, The Perpetual Building & Loan Association, for a loan of Fifty-five Hundred (\$5,500.00) Dollars each on both 1211 and 1213 L Street, N. W.

7. After the plaintiff had orally accepted the offer of the defendant, Johnson, to purchase the said property, the plaintiff inquired of the defendant, Johnson, at what title company the settlement would be had, but the defendant, Johnson, represented to the plaintiff that it was not necessary to have a settlement at a title company, that he could draw all of the papers and that it would be a saving of several hundreds of dollars to him to have the settlement in his office and that when he was ready and had all of the documents prepared, he would communicate with her and have her come to his office to make settlement. The plaintiff does not now and never has had any knowledge and/or training in the preparation of deeds or other papers usual in real estate transactions, and believing the defendant, Johnson, to be a duly licensed real estate broker, relied implicitly upon all of his statements as more specifically set forth hereinafter.

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8. On, to-wit, October 13, 1954, the defendant, Johnson, in furtherance of his scheme to defraud the plaintiff of her property requested the plaintiff to come to his office at, to-wit, 1424 K Street, N. W.

9. Upon the plaintiff's arrival at the defendant Johnson's office as aforesaid on October 13, 1954, the defendant, Johnson, represented to the plaintiff that he, the defendant, Johnson, was ready to make settlement and that certain of the necessary papers had been prepared or were in the process of being prepared.

10. The defendant, Johnson, then represented to the plaintiff that it was necessary that she sign a sales contract and falsely and fraudulently represented to her that a paper which was partially covered by other papers was such a sales contract and falsely and fraudulently induced the plaintiff to sign that document, which was, in fact, a deed from the plaintiff of the aforesaid property to the defendant, Robert H. Johnson, who recorded same on October 14, 1954, in Liber 10289 folio 275 of the Land Records of the District of Columbia.

11. In order to further defraud and deceive the plaintiff, defendant, Johnson, on October 13, 1954, executed and delivered a note payable to the plaintiff in the sum of \$30,000.00 with interest at five per cent per annum with monthly installments of \$170.00, said note representing on its

face that it was secured by a first deed of trust on the property to Ira M. Lowe and Antonin Novak, trustees, which note the plaintiff deposited with the First Federal Building & Loan Association. The plaintiff having advised the defendant, Johnson, that the aforesaid note was deposited at the First Federal Building & Loan Association for collection, he made four payments thereon between November 15th, 1954 and February 15th, 1955, leaving due and owing \$29,818.87.

12. The defendant, Johnson, never tendered to the plaintiff a deed of trust as described on the face of the note, nor recorded any deed of trust to secure said note.

13. Thereafter the defendant, Johnson, without the knowledge or consent of the plaintiff executed two first deed of trusts of the property to the defendants, Samuel Scrivener, Jr. and Junior F. Crowell, each deed of trust to secure the defendant, Perpetual Building & Loan Association, in the sum of \$5,500.00. Said deeds of trust were recorded on

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October 18, 1954, in Liber 10,291 at folios 459 and 463.

14. Thereafter the defendant, Johnson, without the knowledge or consent of the plaintiff executed two second deeds of trust upon the property to the defendants, Thomas Laughlin and L. A. Sinclitico, trustees, each deed of trust in the amount of \$2,650.00 to secure the defendant, Mary E. Dunnigan.

15. The plaintiff is informed and believes and therefore avers that the two above second deed of trust notes referred to above and recorded at Liber 10355 at folios 392 and 396 are now held by the defendant, Leo V. Glorius, who has directed the trustee defendants, Laughlin and Sinclitico to sell the premises 1213 L Street, N. W. at public auction on May 3, 1955, under the second deed of trust recorded in Liber 10355 at folio 396.

WHEREFORE the premises considered, plaintiff prays:

(1) That this court enter orders restraining defendants pendente lite and permanently from foreclosing under the deeds of trust the plaintiff's property.

(2) That the deed from the plaintiff to the defendant, Johnson,

recorded on October 14, 1954, and recorded in the Land Records at Liber 10289, at folio 275 be set aside and declared null and void.

(3) That the defendant, Johnson, be required to account to the plaintiff for all rents and profits on said property.

(4) That said deeds of trust be declared to be null and void.

(5) That a trustee or trustees be appointed to operate and manage said property pending further order of this court.

(6) And for such other and further relief as the case may require and to the court may seem meet and proper.

/s/ Mary Osin

DISTRICT OF COLUMBIA, ss:

MARY OSIN, being first duly sworn according to law deposes and says that she has read the foregoing Complaint by her subscribed; that the facts stated therein upon her information are true and those stated upon information and belief, she believes to be true.

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/s/ Mary Osin

SUBSCRIBED and sworn to before me this 29th day of April, 1955.

/s/ Olive E. Fitzgerald
Notary Public, D. C.

Burton, Heffelfinger, McCarthy & Kendrick

By: /s/ Ward B. McCarthy
Ward B. McCarthy
Attorneys for Plaintiff
1005 Investment Building
Washington 5, D. C.

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[Filed June 1, 1955]

MARY OSIN

Plaintiff

vs.

ROBERT H. JOHNSON, et al
Defendants

and

Civil Action No. 1940-55

Victor H. Umbricht)
 3612 Albemarle St., N. W.)
 Washington, D. C.)
 Intervener)

ANSWER OF VICTOR H. UMBRICH, INTERVENER

Comes now Victor H. Umbricht, Intervener, by his attorney, and makes Answer to the numbered paragraphs of the Complaint herein, as follows:

Paragraph 1. Jurisdiction of the Court is admitted.

Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15. The intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in these paragraphs, and therefore neither admits nor denies them but demands proof thereof, except that intervener admits the allegation in paragraph 10 that a deed from the plaintiff to defendant Robert H. Johnson is recorded in the Land Records of the District of Columbia as from October 14, 1954.

FOR FURTHER ANSWER, Victor H. Umbricht, Intervener, states:

181 1. On March 31, 1955, judgment was duly entered in the Municipal Court of the District of Columbia in his favor and against the defendant, Robert H. Johnson, in the amount of \$1,475, with interest at 6% per annum from February 28, 1955, and costs, in Docket No. M-7187-55. On the same date, March 31, 1955, he docketed a certified copy of said judgment in the office of the Clerk of this Court, to which was assigned number MC-905-55. Thereupon, said judgment became a lien on all real estate of said Robert H. Johnson, in the District of Columbia, pursuant to D. C. Code, sections 11-755(c) and 15-103.

2. At all times since October 14, 1954, and particularly, on and since March 31, 1955, the defendant Robert H. Johnson has been and is the record owner of the real estate involved in this suit, in fee simple.

3. He is the holder and owner of a valid lien on the real estate here in suit as from March 31, 1955, to secure payment of the said judgment, subject only to such prior liens as may be shown to have been duly recorded prior to March 31, 1955, and to be valid and subsisting.

4. That any rights of the plaintiff in and to the real estate here in

suit, not having appeared of record prior to March 31, 1955, are subordinate to the said lien of the intervener.

WHEREFORE, Victor H. Umbricht, intervener, prays the Court:

1. That the Court decree that intervener's judgment lien is a valid and subsisting lien on the real property here involved as from March 31, 1955.

182 2. That the Court decree that said judgment lien is superior to any claim of the plaintiff in or to the real property here involved.

3. That the intervener have such other and further relief as to the Court may seem just.

George Bronz
Attorney for Intervener-Defendant,
Victor H. Umbricht
839 - 17th Street, N. W.
Washington 6, D. C.
REpublic 7-0052.

June 1, 1955.

183 (CERTIFICATE OF SERVICE)

193 [Filed Aug. 25, 1955]

MARY OSIN

Plaintiff

vs:

ROBERT H. JOHNSON, et al
Defendants

and

VICTOR H. UMBRICHT
3612 Albemarle Street, N. W.
Washington, D. C.,

YORGUY H. HAKIM
2215 Wyoming Avenue, N. W.
Washington, D. C.,
Intervenors

Civil Action No. 1940-55

ANSWER OF YORGUY H. HAKIM, INTERVENOR

Comes now, Yorguy H. Hakim, by his attorney, Maurice A. Guervitz, and makes answer to the complaint filed herein:

1. Jurisdiction of the Court is admitted.
2. thru 15. Incl. Intervenor has no knowledge or sufficient information, either to admit nor deny the truth of the allegations contained in the foregoing paragraphs, and, therefore, neither admits nor denies said allegations, but demands strict proof thereof; except that intervenor admits the allegation in paragraph 10, that a deed from the plaintiff to the defendant, Robert H. Johnson, is recorded in the Land Records of the District of Columbia as of October 14, 1954.

Intervenor avers as follows:

1. On May 4, 1955 a judgment, in the sum of \$4,500.00, was entered in favor of your intervenor, Yorguy H. Hakim, with interest at the rate of 6% per annum. Thereupon, said judgment became a lien on all real estate of the said Robert H. Johnson in the District of Columbia, pursuant to the D. C. Code, Section 15-103.
2. At all times since October 14, 1954, and particularly since May 4, 1955, the defendant Johnson has been and is the record owner of the real estate involved in this suit, in fee simple.
3. Your intervenor is the holder and owner of a valid lien on the real estate in the above-entitled suit as of from May 4, 1955, in order to secure payment of the said judgment, subject only to such prior liens as may be shown to have duly recorded prior to May 4, 1955, and to be valid and subsisting.
4. That any rights of the plaintiff in and to the real estate in the above-entitled suit, not having appeared of record prior to May 4, 1955, are subordinate to the said lien of this intervenor.

WHEREFORE, this intervenor prays:

1. That the Court decree that this intervenor's judgment lien is a valid and subsisting lien on the real property herein involved as of from May 4, 1955.
2. That the Court decree that said judgment lien is superior to any

claim of the plaintiff in or to the real property herein involved.

3. And for such other and further relief as to the Court may seem just and proper.

/s/ Maurice A. Guervitz
Attorney for Yorguy H. Hakim,
Intervenor
507 Denrike Building
Washington 5, D. C.

(CERTIFICATE OF SERVICE)

196 [Filed Aug. 29, 1955]

DEFAULT

It appearing that the above-named defendant Robert H. Johnson has failed to plead or otherwise defend this action though duly served with summons and copy of the complaint on the 29th day of April, 1955, and an affidavit on behalf of the plaintiff having been filed, it is this 29th day of August, 1955 declared that Robert H. Johnson defendant herein is in default.

HARRY M. HULL, Clerk,
By /s/ Margaret J. Unger
Deputy Clerk

199 [Filed Oct. 27, 1955]

MOTION TO AMEND COMPLAINT TO SET ASIDE DEED
FOR INJUNCTIVE RELIEF, ACCOUNTING AND OTHER RELIEF

The plaintiff moves the Court to enter an order allowing the plaintiff to amend the original Complaint by adding thereto the following paragraph:

"11(a) The plaintiff hereby tenders to the defendant, Johnson, or to such other person or persons as the Court may direct, the \$680.00 paid by the defendant, Johnson, on the note referred to in paragraph 11 above."

For grounds of this Motion, the plaintiff says the above paragraph was inadvertently omitted from the original petition.

BURTON, HEFFELFINGER,
McCARTHY & KENDRICK

By: /s/ Ward B. McCarthy
* * *

To:

Maurice A. Guervitz, Esq.
507 Denrike Building
Washington, D. C.

Mr. Robert H. Johnson
c/o District Jail
Washington, D. C.

Samuel Scrivener, Jr., Esq.
1518 K Street, N. W.
Washington, D. C.

Jacob Sandler, Esq.
Tower Building
Washington, D. C.

Messrs. Nathan Lubar and Harold
J. Nussbaum
Woodward Building
Washington, D. C.

Arthur Quinn, Esq.
Commonwealth Building
Washington, D. C.

George Bronz, Esq.
839 - 17th Street, N. W.
Washington, D. C.

Please take notice that the foregoing Motion will be called to the attention of the Court. If you oppose the granting of the above Motion, you shall file with the clerk of said Court your objections in writing and serve a copy thereof upon counsel for the plaintiff.

/s/ Ward B. McCarthy
Attorney for Plaintiff

(CERTIFICATE OF SERVICE)

[Filed Nov. 14, 1955]

AMENDED ANSWER OF DEFENDANTS PERPETUAL BUILDING
ASSOCIATION, SAMUEL SCRIVENER, JR., TRUSTEE,
AND JUNIOR F. CROWELL, TRUSTEE, AND
CROSS-COMPLAINT OF DEFENDANT
PERPETUAL BUILDING ASSOCIATION

Defendants Perpetual Building Association, Samuel Scrivener, Jr., and Junior F. Crowell, by their attorney, and by leave of Court, amend the Answer heretofore filed by them to include the Cross-Complaint of

Perpetual Building Association against defendant Robert H. Johnson as follows:

**ANSWER OF PERPETUAL BUILDING ASSOCIATION,
SAMUEL SCRIVENER, JR., TRUSTEE, AND
JUNIOR F. CROWELL, TRUSTEE**

Paragraph 1. Jurisdiction of the Court is admitted.

Paragraph 2. Defendants Scrivener and Crowell admit they are citizens of the United States and residents of the District of Columbia.

202 Defendant Perpetual Building Association admits that it does business in the District of Columbia. The remaining allegations of this paragraph are neither admitted nor denied.

Paragraph 3. Defendants neither admit nor deny the allegations of this paragraph but state that the records of the Recorder of Deeds of the District of Columbia show that as of October 18, 1954, defendant Johnson was the owner in fee simple of the property described in this paragraph.

Paragraphs 4, 5, 7, 8, 9, 10, 11, 12, 14 and 15. These defendants have no knowledge as to the truth of the allegations contained in these paragraphs and therefore neither admit nor deny them but demand proof thereof.

Paragraph 6. Defendant Perpetual Building Association states that on or about October 14, 1954, it gave to defendant Johnson commitments for two loans of \$5,500, to be made on the security of 1211 and 1213 L Street, N. W., Washington, D. C. Defendants are without knowledge if the commitment was made without the knowledge and consent of plaintiff Osin.

Paragraph 13. The allegations of this paragraph are admitted except these defendants have no knowledge as to the allegation that plaintiff was without knowledge and did not consent to the execution of the deeds of trust.

FOR FURTHER ANSWER, defendants Perpetual Building Association, Samuel Scrivener, Jr., and Junior F. Crowell state as follows:

1. On October 18, 1954, the date of execution of the deeds of trust set forth in paragraph 13 of the Complaint, the Land Records of the District of Columbia showed that the title to the property here in dispute was

good in fee simple in Robert H. Johnson, defendant herein.

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2. In reliance on the Land Records of the District of Columbia, defendant, through its Treasurer, made two loans to defendant Johnson, each in the amount of \$5,500. and repayment being secured by deeds of trust of premises 1211 and 1213 L Street, N. W., for which said Johnson delivered his notes in like amount and the deeds of trust set forth in Paragraph 13 of the Complaint, which loans have not been repaid nor have the deeds of trust been released.

3. These defendants had no knowledge of any rights of plaintiff Mary Osin in the aforesaid properties nor did the Land Records of the District of Columbia show that she had any interest therein on October 18, 1954.

CROSS-COMPLAINT OF DEFENDANT PERPETUAL BUILDING ASSOCIATION

The Cross-Complaint of defendant Perpetual Building Association against defendant Robert H. Johnson respectfully states as follows:

1. Jurisdiction of this Court is based on Title 11, Section 306, et seq. of the District of Columbia Code, 1951 Edition, and the amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000) exclusive of interest and costs.

2. Defendant and cross-complainant Perpetual Building Association is a voluntary unincorporated association of members carrying on the business of a savings and loan association in the District of Columbia.

3. Defendant and cross-defendant Robert H. Johnson is a resident of the District of Columbia and is sued as the maker of the promissory notes and deeds of trust hereinafter described.

4. On or about October 14, 1954, Robert H. Johnson made application to Perpetual Building Association for two loans of \$5,500.00 each and to secure the repayment thereof offered to execute and deliver first deeds of trust of property in the District of Columbia known as Part of Lot 2 in

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Square 283, being improved by premises Nos. 1211 and 1213 L Street, N. W., Washington, D. C. Johnson represented to Perpetual Building Association that he owned these properties and an examination of

the land records of the District of Columbia showed this to be true. Perpetual Building Association thereupon agreed to make the loans.

5. On or about October 18, 1954, Perpetual Building Association loaned Johnson the sum of \$11,000.00 and Johnson thereupon executed two promissory notes in the amount of \$5,500.00 each, payable to the order of the Treasurer of Perpetual Building Association, each note being secured by a deed of trust executed by Johnson and conveying one of the aforesaid properties to defendants Scrivener and Crowell, as trustees. These deeds of trust were recorded on October 18, 1954, in Liber 10,291 at folios 459 and 463, of the land records of the District of Columbia. Payments were made on these notes in November and December, 1954, and in January, 1955, but no payments have been made since then and the notes are in default. On the date of this answer there is an unpaid balance of \$11,358.96, including principal and interest, which is increased each month by the addition of interest.

6. In the present action plaintiff Mary Osin alleges that defendant Johnson fraudulently procured from her a deed to the aforesaid properties, and plaintiff Osin prays that such deed and the deeds of trust made by defendant Johnson to Perpetual Building Association be set aside and declared null and void.

7. In the event this Court finds for plaintiff Osin and declares the deed from plaintiff to defendant Johnson and the deeds of trust made by defendant Johnson to be null and void, the notes held by Perpetual Building Association will be unsecured and Perpetual Building Association will be unable to foreclose on the real estate described in the deeds of trust.

WHEREFORE, the premises considered, defendants Perpetual Building Association, Samuel Scrivener, Jr., and Junior F. Crowell pray the Court:

205 1. That the Complaint fails to state a cause of action against these defendants and should be dismissed as to them.

2. That the Court decree that the deeds of trust held by defendant Perpetual Building Association are good and valid first liens on the property involved herein.

3. That if a trustee or trustees be appointed to operate and manage the property, said trustee or trustees be instructed to continue to make the monthly payments due and owing on the notes held by defendant Perpetual Building Association.

4. That in the event the Court declares the deed from Mary Osin to Robert H. Johnson and the deeds of trust from Robert H. Johnson to Perpetual Building Association to be null and void, then Perpetual Building Association be awarded a money judgment against said Robert H. Johnson in the amount of \$11,358.96, together with interest to date of payment.

5. And for such other and further relief as to the Court may seem just.

/s/ Samuel Scrivener, Jr.
 Attorney for Defendants
 Perpetual Building Association
 Junior F. Crowell
 Samuel Scrivener, Jr.
 1518 K Street, N. W.
 Washington 5, D. C.

(CERTIFICATE OF SERVICE)

207

[Filed Nov. 18, 1955]

DEMAND FOR JURY TRIAL

Comes now the plaintiff, MARY OSIN, by her attorneys, Burton, Heffelfinger, McCarthy & Kendrick, and demands a trial by jury upon all issues.

BURTON, HEFFELFINGER,
 McCARTHY & KENDRICK
 By: /s/ Ward B. McCarthy
 * * *

(CERTIFICATE OF SERVICE)

208

[Filed Nov. 18, 1955]

MOTION TO STRIKE DEMAND FOR JURY TRIAL

Victor H. Umbricht, Intervener-Defendant, by his attorney, moves the Court to strike the demand for jury trial heretofore served and filed by plaintiff and to retain the case on the non-jury calendar (or, if the case has been transferred to the jury calendar, to transfer it back to the non-jury calendar), on the grounds that:

1. No right of trial by jury exists under the Constitution or laws of the United States as to the issues herein.

2. Plaintiff has waived any right to trial by jury in this action in that such demand was not served within ten days after the service of the last pleading herein.

/s/ George Bronz
 Attorney for Intervener-
 Defendant Victor H. Umbricht,
 * * *

November 18, 1955.

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[Filed Nov. 18, 1955]

MOTION TO STRIKE JURY DEMAND

Comes now the Defendant, Leo V. Glorius, and moves to strike the jury demand filed herein, for the reason that the same is filed too late.

/s/ Mark P. Friedlander

/s/ Jacob Sandler

Mark P. Friedlander and
 Jacob Sandler
 Rm. 502 Hill Building
 839 - 17th Street, N. W.
 Washington 6, D. C.
 Attorneys for Laughlin,
 Sinclitico and Glorius

(CERTIFICATE OF SERVICE)

210

[Filed Jan. 6, 1956]

ORDER

Upon consideration of the plaintiff's demand for a jury trial and the motion of the defendants Umbricht and Glorius to strike said demand and argument in open court, it is by the Court, this 6th day of January, 1956,

ORDERED that the defendants' motions to strike the jury demand be and the same are hereby denied.

/s/ Edward M. Curran
Judge

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[Filed Jan. 13, 1956]

APPEARANCE AND ANSWER OF BERNARD E. SHERMAN

It appearing to the Court at the pretrial that Bernard E. Sherman had purchased one of the notes from the defendant Leo B. Glorius and that inadvertently Plaintiff had not joined Bernard E. Sherman as a party defendant; and it further appearing that the Court, at the pretrial of this cause, authorized the appearance of Bernard E. Sherman to be entered in this cause as a Defendant, said Bernard E. Sherman does adopt the defenses offered by the defendant Glorius and, in addition thereto, says:

That he in good faith and for value, and without notice and before maturity, purchased the promissory note in the face sum of \$1,650.00 secured by a second deed of trust on premises 1211 "L" Street, N. W.;

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that he did not know the Plaintiff in this case nor the defendant Johnson.

/s/ Mark P. Friedlander

Mark P. Friedlander

* * *

(CERTIFICATE OF SERVICE)

225

[Filed Jan. 30, 1956]

DEFAULT

It appearing that the above-named cross-defendant, Robert H. Johnson, has failed to plead or otherwise defend the cross-complaint of defendant Perpetual Building Association, though duly served with copy of the cross-complaint by mailing same to his attorney of record, Robert I. Sherry, Esq., 1025 Vermont Avenue, N. W., Washington, D. C., on the 10th day of November, 1955, and an affidavit on behalf of the cross-complainant having been filed, it is this 30th day of January, 1956 declared that Robert H. Johnson, cross-defendant herein is in default.

HARRY M. HULL, Clerk

By /s/ Raymond L. Gelting
Deputy Clerk

226

[Filed Feb. 23, 1956]

ORDER

Upon consideration of defendant, Perpetual Building Association's, renewal of its motion to strike jury demand in which the other defendants joined, and it appearing to the Court that the relief sought in this case is purely equitable and that, accordingly, the plaintiff is not entitled to a jury trial, it is by the Court this 23d day of February, 1956,

ORDERED, that the motion to strike plaintiff's jury demand be and the same is hereby granted; and it is further

ORDERED, that the demand for jury be and the same is hereby stricken.

/s/ Matthew F. McGuire
Judge

(CERTIFICATE OF SERVICE

227

[Filed Mar. 21, 1956]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on for trial and the Court having heard the evidence adduced by the plaintiff (defendants having presented no evidence) and having considered arguments of counsel and memoranda of law submitted by counsel, makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Prior to October 13, 1954, Mary Osin was the owner of parts of Lot 2 in Square 283 in the District of Columbia, improved by premises known as 1211 and 1213 L Street Northwest, Washington, D. C.

2. Defendant, Robert H. Johnson, offered to buy these two properties from the plaintiff for a total consideration of \$30,000, to be paid by a promissory note for \$30,000 secured by deeds of trust on the properties. Contracts of sale were submitted by Johnson to plaintiff on September 2, 1954.

3. Mrs. Osin was a woman of some experience in real estate transactions, having bought at least eight pieces of property and having sold at least five, most of which involved purchase money deeds of trust. She had attended the settlements of each of said purchases or sales.

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4. Plaintiff agreed to accept this offer, and on October 13, 1954, went to defendant Johnson's office at 1424 K Street, N. W. for settlement of the transaction. On that day plaintiff, Mary Osin, executed a special warranty deed to the defendant, Robert H. Johnson, conveying all her right, title and interest in said property to said Johnson.

5. Defendant Johnson falsely and fraudulently induced plaintiff to execute such special warranty deed by representing to her that he would execute in her favor and duly record a first deed of trust to secure the payment of the purchase price, when in fact he had no intention of recording such a deed of trust, but intended, on the contrary to borrow money on the security of each premise and in doing so to represent to such prospective lenders that he owned the premises free and clear of any lien or encumbrance.

6. Plaintiff at the time of settlement received from Johnson a promissory note for \$30,000, payable in monthly installments of \$170.00 which note was deposited by Mrs. Osin with the First Federal Savings and Loan Association for collection. Thereafter, monthly payments were made by Johnson for four months, which payments were credited to plaintiff's account and of which she was notified by said building association. Plaintiff has tendered the sum of \$680.00, representing such four installments of \$170.00 each, to the defendant, Johnson, or to such other person or persons as the Court may direct.

7. Plaintiff, shortly after October 13, sought, and received, return of her deposits with the several utility companies for service to the aforesaid houses. She agreed that defendant Johnson should receive the rents for said properties thereafter and she no longer received them herself. She made no further efforts to sell the property and later went to Florida

229 from which place she wrote letters on March 30, 1955, stating that she had sold the properties and had received back a purchase money deed of trust.

8. About Oct. 13, 1954, the said Johnson applied to the Perpetual Building Association for a loan on said properties representing that he had a good, unencumbered record title thereto. The Perpetual Building Association caused a search of the record of the Recorder of Deeds' Office to be made to determine Johnson's title and said records showed that Johnson had a good record title to said properties. Perpetual Building Association had no knowledge or information of any claim of plaintiff to said property or any knowledge that Johnson's title was in any way defective. Relying on said land records of the District of Columbia, the Perpetual Building Association loaned \$5,500 to said Johnson on each of said properties, receiving from him promissory notes for a total of \$11,000 and deeds of trust from him for the two said properties which were duly recorded among the land records of the District of Columbia on October 18, 1954.

9. Thereafter, the defendant Johnson executed second deeds of trust on the two properties in the amount of \$1,650 each, and through an agent sold them to defendant Leo B. Glorius. Said second deeds of trust were

caused to be recorded among the land records of the District of Columbia in January, 1955. Subsequently, said Glorius sold the note for \$1,650.00 secured by second deed of trust on the premises 1211 L Street, N. W., to Bernard E. Sherman, but said Glorius is still the owner and holder of the note secured on the premises 1213 L Street, N. W. Neither said Glorius nor said Sherman had any knowledge of any fraud practiced by said Johnson on plaintiff nor any notice of any claim to said property by plaintiff.

10. Thereafter, intervenor Yorguy H. Hakim obtained a judgment on May 4, 1955, against the said Robert H. Johnson in the sum of \$4,500 with interest and costs in Civil Action No. 777-55 after an attachment

230 before judgment was levied in his favor on the real estate here involved, on February 24, 1955. Said judgment remains wholly unsatisfied.

11. On March 31, 1955, intervenor Victor H. Umbricht obtained a judgment against defendant, Robert H. Johnson, in the amount of \$1,475, with interest from February 28, 1955, and costs, in Civil Action No. M-7187-55 in the Municipal Court of the District of Columbia, which said judgment was docketed on March 31, 1955 with the Clerk of this Court under No. MC-905-55. This judgment remains wholly unsatisfied.

12. Said intervenors Hakim and Umbricht have stipulated in open court that the respective priorities of any liens which either or both of them shall be found to have on the premises here involved shall, as between themselves be as follows:

(a) Intervenor Umbricht shall have first priority to the extent of \$800.

(b) Intervenor Hakim shall have second priority to the extent of the whole judgment lien here asserted.

(c) Intervenor Umbricht shall have third priority to the extent of the remainder of his judgment lien here asserted.

13. Said intervenor Umbricht has advised the Court that a Writ of Attachment on said judgment was served on plaintiff Osin at his instance on the order of the Municipal Court on October 28, 1955, and that plaintiff made reply to the interrogatories accompanying said Writ of Attachment by stating that

"Whether or not this garnishee is indebted to the judgment defendant will be determined by the United States District Court for the District of Columbia in Civil Action No. 1940-55 - Osin v. Johnson, et al."

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Proceedings on said Writ of Attachment have been continued by the Municipal Court, on stipulation of counsel for plaintiff Osin and intervenor Umbricht, pending the outcome of the case at bar. If the property herein is reconveyed to plaintiff Osin, it would follow that the \$680. tendered by plaintiff would be the property of defendant Johnson, and such sum would thereupon be subject to the disposition of the Municipal Court on such pending Writ of Attachment as a debt of plaintiff Osin to defendant Johnson.

Conclusions of Law

1. This Court has jurisdiction of the parties and of the subject matter of this case.

2. Defendant, Johnson, procured by fraud the deed from Mrs. Osin to himself, dated October 13, 1954, in that he promised to deliver and to record a deed of trust on said property, which promise he did not fulfill.

3. The deed obtained by Johnson from Mrs. Osin is voidable and should now be set aside for fraud.

4. Defendant, Perpetual Building Association, was an innocent purchaser for value without notice of any claim of the plaintiff's when it loaned a total of \$11,000 to Johnson, secured by deeds of trust on two properties here involved. The deeds of trust from Johnson to it are, therefore, valid and may not be set aside.

5. Defendants, Leo B. Glorius and Bernard E. Sherman were innocent purchasers for value without notice of any claim of the plaintiff's in purchasing the second deeds of trust on the two properties here involved. Therefore, the two second deeds of trust from Johnson to them are valid and may not be set aside.

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6. The judgments of Yorguy H. Hakim and of Victor H. Umbricht are valid liens upon said real estate here involved and should be satisfied after satisfaction of the aforesaid deeds of trust.

/s/ Lamar Cecil
Judge

(CERTIFICATE OF SERVICE)

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[Filed Mar. 21, 1956]

JUDGMENT

This cause having come on for trial and the Court having considered the evidence and memoranda submitted by counsel and the argument considered by counsel, and having reached the conclusions which are more fully set forth in the Findings of Fact and Conclusions of Law filed herein, it is, by the Court this 21st day of March, 1956.

ORDERED, that judgment be and the same is hereby entered for Mary Osin against the defendant, Robert H. Johnson, to the extent that the deed to parts of Lot 2, in Square 283, improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C., dated October 13, 1954, be and the same is hereby cancelled and set aside as of this date; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Perpetual Building Association; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Samuel Scrivener, Jr.; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Junior F. Crowell; and it is further

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ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Thomas Laughlin; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, L. A. Sinclitto; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Bernard E. Sherman; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of Yorguy H. Hakim, declaring him to have a valid lien against

the property, Lot 2, Square 283, improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C., junior to the first deed of trust and the second deeds of trust, with priority from February 24, 1955, in the amount of \$4,500, plus interest from May 4, 1955, and costs; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of Victor H. Umbricht, declaring him to have a valid lien against the property, Lot 2, Square 283, improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C., junior to the first deed of trust and the second deeds of trust, with priority from March 31, 1955, in the amount of \$1,475, with interest from February 28, 1955, and costs; provided, that, to the extent of \$800, such lien of intervenor Umbricht is declared to be prior to the lien of intervenor Hakim; and it is further

ORDERED, that if plaintiff Osin shall elect within 30 days hereof to have the property reconveyed to her and shall give notice thereof in writing to defendant Johnson, with copies to other counsel herein, it is hereby ordered that said defendant Johnson shall duly execute a quitclaim deed conveying all his right, title and interest in and to the premises here

241 in suit to the plaintiff Osin. In the event of such an election, if the defendant Johnson shall refuse or fail to execute and deliver to the plaintiff Osin such a deed within the period aforesaid, the receiver heretofore appointed by this Court is hereby ordered to execute such a deed which deed shall in all respects be fully as effective as if it had been executed by said defendant Johnson. In the event of such an election, the sum of \$680.00 tendered by plaintiff herein is hereby adjudged to be the property of defendant Johnson and shall be subject to the orders of the Municipal Court in the proceedings on the Writ of Attachment issued on behalf of intervenor Umbricht or to any better claim thereto which may be shown to the Municipal Court; and it is further

ORDERED, that all parties hereto are hereby enjoined from taking any steps to foreclose any deed of trust or other lien on the premises here in suit, for a period of 45 days from the date hereof; and it is further

ORDERED, that the receiver, Arthur L. Quinn, shall be discharged

and released and his surety shall be discharged and released 45 days after the date hereof.

/s/ Lamar Cecil
Judge

242 (CERTIFICATE OF SERVICE)

243 [Filed Apr. 16, 1956]

NOTICE OF APPEAL

Notice is hereby given this 16th day of April, 1956 that MARY OSIN hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 21st day of March, 1956 in favor of ROBERT H. JOHNSON, PERPETUAL BUILDING ASSOCIATION, SAMUEL SCHRIVENER, Jr., JUNIOR F. CROWELL, THOMAS LAUGHLIN, L. A. SINCLITICO, LEO V. GLORIUS, BERNARD E. SHERMAN, YORGUY H. HAKIM, VICTOR H. UMBRICH and ARTHUR L. QUINN, against the said MARY OSIN.

BURTON, HEFFELFINGER,
McCARTHY & KENDRICK

By /s/ Ward B. McCarthy
* * *

Copies to:

Ross O'Donoghue, Esquire
Union Trust Building, Washington 5, D. C.

Mark P. Friedlander, Esquire
939 - 17th Street, N. W., Washington, D. C.

Maurice A. Guervitz, Esquire
1010 Vermont Avenue, N. W., Washington, D. C.

George Gronz, Esquire
839 - 17th Street, N. W., Washington, D. C.

Daniel L. Sherry, Esquire
1025 Vermont Avenue, N. W., Washington 5, D. C.

Arthur L. Quinn, Esquire
Commonwealth Building, Washington, D. C.

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[Filed Apr. 23, 1956]

AMENDED JUDGMENT

This cause having come on for trial and the Court having considered the evidence and memoranda submitted by counsel and the argument considered by counsel, and having reached the conclusions which are more fully set forth in the Findings of Fact and Conclusions of Law filed herein, it is, by the Court this 21st day of March, 1956.

ORDERED, that judgment be and the same is hereby entered for Mary Osin against the defendant, Robert H. Johnson, to the extent that the deed to parts of Lot 2, in Square 283, improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C., dated October 13, 1954, be and the same is hereby declared voidable at the option of the plaintiff Osin, such option to be exercised as hereinafter provided; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Perpetual Building Association; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Samuel Scrivener, Jr.; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Junior F. Crowell; and it is further

245 ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, Thomas Laughlin; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of the defendant, L. A. Sinclitto; and it is further

ORDERED that judgment be and the same is hereby entered on behalf of the defendant, Bernard E. Sherman; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of Yorguy H. Hakim, declaring him to have a valid lien against the property, Lot 2, Square 283, improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C., junior to the first deed of trust and the second deeds of trust, with priority from February 24, 1955, in the amount of \$4,500, plus interest from May 4, 1955, and costs; and it is further

ORDERED, that judgment be and the same is hereby entered on behalf of Victor H. Umbricht, declaring him to have a valid lien against the property, Lot 2, Square 283, improved by premises known as 1211 and 1213 L Street, N. W., Washington, D. C., junior to the first deed of trust and the second deeds of trust, with priority from March 31, 1955, in the amount of \$1,475, with interest from February 28, 1955, and costs; provided, that, to the extent of \$800, such lien of intervenor Umbricht is declared to be prior to the lien of intervenor Hakim; and it is further

ORDERED, that if plaintiff Osin shall elect within 30 days hereof to have the property reconveyed to her and shall give notice thereof in writing to defendant Johnson, with copies to other counsel herein, it is hereby ordered that said defendant Johnson shall duly execute a quitclaim deed conveying all his right, title and interest in and to the premises here

246 in suit to the plaintiff Osin. In the event of such an election, if the defendant Johnson shall refuse or fail to execute and deliver to the plaintiff Osin such a deed within the period aforesaid, the receiver heretofore appointed by this Court is hereby ordered to execute such a deed which deed shall in all respects be fully as effective as if it had been executed by said defendant Johnson. In the event of such an election, the sum of \$680.00 tendered by plaintiff herein is hereby adjudged to be the property of defendant Johnson and shall be subject to the orders of the Municipal Court in the proceedings on the Writ of Attachment issued on behalf of intervenor Umbricht or to any better claim thereto which may be shown to the Municipal Court; and it is further

ORDERED, that all parties hereto are hereby enjoined from taking any steps to foreclose any deed of trust or other lien on the premises here in suit, for a period of 45 days from the date hereof; and it is further

ORDERED, that the receiver, Arthur L. Quinn, shall be discharged and released and his surety shall be discharged and released 45 days after the date hereof.

Entered nunc pro tunc March 21, 1956.

/s/ Lamar Cecil
Judge

[Filed Apr. 26, 1956]

NOTICE OF APPEAL

Notice is hereby given this 26 day of April, 1956, that MARY OSIN hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the amended judgment of this Court entered nunc pro tunc as of the 21st day of March 1956 and entered on the docket on the 23rd day of April, 1956 in favor of ROBERT H. JOHNSON, PERPETUAL BUILDING ASSOCIATION, SAMUEL SCHRIVENER, Jr., JUNIOR F. CROWELL, THOMAS LAUGHLIN, L. A. SINCLITICO, LEO V. GLORIUS, BERNARD E. SHERMAN, YORGUY H. HAKIM, VICTOR H. UMBRICH and ARTHUR L. QUINN, against the said MARY OSIN.

BURTON, HEFFELFINGER,
McCARTHY & KENDRICK

By /s/ Ward B. McCarthy
* * *

Copies to:

Ross O'Donoghue, Esquire
Union Trust Building, Washington 5, D. C.

Mark P. Friedlander, Esquire
939 - 17th Street, N. W., Washington, D. C.

Maurice A. Guervitz, Esquire
1010 Vermont Avenue, N. W., Washington, D. C.

George Bronz, Esquire
839 - 17th Street, N. W., Washington, D. C.

Daniel L. Sherry, Esquire
1025 Vermont Avenue, N. W., Washington 5, D. C.

Arthur L. Quinn, Esquire
Commonwealth Building, Washington, D. C.

This Deed

Plaintiff's EXHIBIT NO. 4

Made this 13th day of October in the year one thousand
nine hundred and fifty-four, by and between

Mary Osin, party of the first part, and

Robert H. Johnson, party of the second part:

Witnesseth, that in consideration of Dollars
the party of the first part do hereby grant unto the party of the second part, in fee simple
, all that piece or parcel of
land, together with the improvements, rights, privileges and appurtenances to the same belonging,
situate in the District of Columbia, described as follows, to wit:

Part of Lot 2 in Square 283 in the subdivision made by the heirs of John Davidson,
as per plat recorded in the Office of the Surveyor for the District of Columbia
in Liber N.K. at folios 79 and 80, described as follows: beginning for the same
on L Street at the Southeast corner of said lot, and running thence North 72 feet;
thence West 13 feet 1½ inches; thence North to the Southerly line of the part of
said lot conveyed to James Robbins, Senior, by deed recorded in Liber J.A.S. 209
at folio 337 of the Land Records of the District of Columbia; thence Northwesterly
along said Southerly line of the part of said lot conveyed as aforesaid, to the
West line of said Lot 2; thence South along said West line, 79 feet to L Street;
and thence East along said street, 26 feet 3 inches to the place of beginning.
Now taxed as Lots 803 and 804 in Square 283.

And the said party of the first part covenant that she will warrant specially
the property hereby conveyed; and that she will execute such further assurances of
said land as may be requisite.

Witness her hand and seal the day and year hereinbefore written.

IN PRESENCE OF—

Merle L. Laviscount Mary Osin [SEAL]
A. C. Simmons [SEAL]

District of Columbia, to wit:

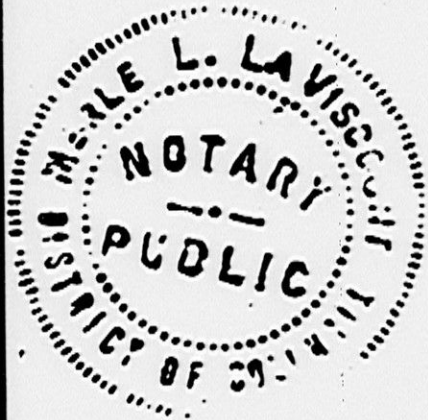
I, Merle L. LeViscount, a Notary Public in and for the District aforesaid,

HEREBY CERTIFY that Mary Osin

who is personally well known to me as the grantor in, and the person who executed the foregoing and annexed deed, dated October 13, A. D. 1954 personally appeared before me in the said District and acknowledged the said deed to be her act and deed.

Given under my hand and seal this 13th day of October, 1954.

Merle L. LeViscount
11/28/54 Notary Public



3601

MARY OSIN

TO

ROBERT H. JOHNSON

RECEIVED FOR RECORD on the day of _____, A. D. 19____ at _____ o'clock _____ M., and recorded in Liber No. 12284 at Folio 275, of the Land Records for the District of Columbia, and examined by _____

10 47 AM '54

Recorder

Mail to: City Mortgage Co., Inc.
516 Realty Building
Washington 5, D. C.



OVERLOOKING
THE OCEAN

Cadet

HOTEL • MIAMI BEACH

FLORIDA INEST
LOCATION

Plaintiff

EXHIBIT NO. 7 *Mar 30/55*

FILED

JUL 17 1956

Moncton, B.C.

7th & H St N.E.

Wash 2 D.C.

HARRY M. HULL, CLERK

Dear Sir: —

While I'm in Fla, until
end of Apr. I would like to have your
attorney look into this matter &
represent me until I return to Wash.

As follows: —

End of last year I sold my
property at 1211 & 932 St N.W. to Mr. John
Johnson, then head of City Mortg Co at 1424 K St
N.W. & is still in same place 13th floor
I had taken back 1st trust on property
payable 13th every mo \$85.⁰⁰ mo each collected by
1st Fed Bldg & Loan, He has pd every note so far
except Mar which was due Mar 13th

PHONE 5-6688

JAMES AVE. AT 17TH ST.

NORTH OF LINCOLN ROAD

OVERLOOKING
THE OCEAN

Cadet

HOTEL • MIAMI BEACH

FLORIDA' NEST
LOCATION

Last evening I received a long dist call from a Sgt Smith, met. police in connection with West Bldg & told me he made some improvements on property & gotten a 2nd hand & is trying to get a 3rd trust & has registered the deed as owner of property in the West Bldg seems as though he is in dutch with West Bldg for improvements against regulations.

I had left my deed in his office as he wanted to see it & I had planned to take it home but neglected to do so seems as though he is in dutch with the inspectors & are checking on him as he don't know they called me here ^{on phone}

Hoping you can straighten out things until I return end of Apr. & I will pay you for your trouble. You can also get in touch with 1st Fed loan & Trust Co.

Sincerely
Mary Olen

PHONE 5-6688

JAMES AVE. AT 17TH ST. NORTH OF LINCOLN ROAD

I also thought the Sgt said his trial will come up this wk.



OVERLOOKING
THE OCEAN

Cadet

HOTEL • MIAMI BEACH

FLORIDA'S "FINEST
LOCALITY"

JUL 17 1955

Mary Lem
New 30/55

Attorney
Richardson Bros
7th + H ST. N.E.
Wash 2, D.C.

HARRY M. HILL, CLERK

Plaintiff's EXHIBIT NO. 5 and

Dear Sir: - I hope you rec'd my letter regarding
the party I sold my 2nd St property too a Mr.
Robert H. Johnson.

Today I rec'd a air-mail special
delivery from Mr. R. Downing, Chief of Investigation
1740 Miami Ave N.W. + he told me the office is
holding an investigation relative to his acquisition
of my property.

I have taken back 1st trust on
property + is with the 1st Fed Court Trust
Co for collection at 85th a month 5%
each house, no down payment was
made at time, but he called me up +
told me he was ready to pay cash for
But he owned, that the main thing I'm
interested in, he seems to have gotten

PHONE 5-6688

JAMES AVE. AT 17TH ST. NORTH OF LINCOLN ROAD



OVERLOOKING
THE OCEAN

Cadet

HOTEL • MIAMI BEACH

FLORIDA'S NEST
LOCAL

Mixed up with the Dist Court for
bldg inspection & now they're really
checking on him as I think he recorded
the deed from my name to his, hoping
you might straighten out my end as
I'm just interested in receiving the
Bal due to me. Hoping to hear
a favorable reply.

Sincerely
Mary.

EXCERPTS FROM TRANSCRIPT OF
TESTIMONY AND PROCEEDINGS

1 [Filed July 13, 1956]

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS before Judge
Lamar Cecil, beginning at 10 a.m. Wednesday, February 29, 1956, at
Washington, D. C., as recorded by Howard M. Kerry, Official Court
Reporter:

PRESENT:

Thomas B. Heffelfinger
and Ward B. McCarthy,
attorneys for plaintiff.

Daniel I. Sherry,
attorney for Robert H. Johnson.

Ross O'Donoghue,
attorney for Perpetual Building Association et al.

Mark P. Friedlander,
attorney for Thomas Laughlin et al.

2 George Bronz,
attorney for Victor H. Umbricht.

Maurice A. Guervitz,
attorney for Yorguy H. Hakim.

* * * * *

MARY OSIN was called and sworn as a witness and then testified
as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:

* * * * *

Q. Miss Osin, will you please state your full name? A. Mary
Osin.

Q. Keep your voice up now. And where do you reside, Miss Osin?
A. 1507 Meridian Place Northwest.

THE COURT: I didn't hear that last?

THE WITNESS: 1507 Meridian Place Northwest.

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* * * * *

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Q. Miss Osin, will you please state your full name? A. Mary
Osin.

Q. Keep your voice up now. And where do you reside, Miss Osin?
A. 1507 Meridian Place Northwest.

THE COURT: I didn't hear that last?

THE WITNESS: 1507 Meridian Place Northwest.

BY MR. HEFFELFINGER:

Q. What is your occupation at the present time, Miss Osin? A. I am unemployed right now.

Q. And how long have you been unemployed? A. I would say, maybe, four or five years.

THE COURT: A little louder, please?

THE WITNESS: Maybe four or five years, I would say, something like that.

THE COURT: All right.

BY MR. HEFFELFINGER:

Q. Now, where were you last employed? A. General Accounting Office.

Q. Is that in the government service? A. Yes.

Q. And were you subsequently retired from the government service? A. Yes, on disability.

Q. And that, you say, was about how long ago? A. I would say four or five years ago.

Q. And what was the basis of your disability, Miss Osin? A. Well, I have a little arthritis in my fingers.

Q. Now, when you were engaged in the government service, what was your job, Miss Osin? What did you do? A. Well, I did a little of everything -- I mean, just routine work -- typing and filing and auditing government papers.

* * * * *

Q. Now, you say auditing. Is this a comparison audit? A. Comparison, yes, that's the type of auditing it is.

Q. Now, directing your attention to the year 1946, did you purchase the premises 1211 and 1213 L Street Northwest? A. Yes, I did.

Q. Now, do you recall when you finally paid off any trust that you may have had against those two properties, Miss Osin? Do you recall when it was approximately? A. Well, '53 -- I'm not sure.

Q. I show you this document and ask you if you can identify that, Miss Osin? Is that the release of the deed of trust? A. Yes, that is.

5 Q. And that is dated June 15, 1953? A. '53, yes. I thought it was '53 but I wasn't sure.

MR. HEFFELFINGER: May I have this marked Plaintiff's Exhibit 1, please? I assume counsel have seen this. It has been marked at the pretrial. This, your honor, merely says that on June 15, 1953, it is the release of the deed of trust which Miss Osin had on the premises at that time.

BY MR. HEFFELFINGER:

Q. Now, did there come a time, Miss Osin, when you had some desire to dispose of the property? A. Yes.

Q. And approximately when was that? A. In, I guess, the latter part of August -- something like that.

THE COURT: August when?

THE WITNESS: August.

THE COURT: What year?

THE WITNESS: '54.

BY MR. HEFFELFINGER:

Q. What was your reason for wishing to sell the property, Miss Osin?

MR. O'DONOGHUE: We object to that, your honor.

6 THE COURT: I don't think that is material. The objection is sustained.

BY MR. HEFFELFINGER:

Q. Now, did there come a time, Miss Osin, when you heard of the defendant, Robert H. Johnson, in this case? A. I met him through a neighbor.

Q. Do you know the name of that neighbor? A. Well, everybody called him Mike. He lived at 1217 L Street.

Q. Now, what were the circumstances under which you met Mr. Johnson? A. Well, he had highly recommended Mr. Johnson as a real estate, licensed real estate broker, that he was a very reliable man to sell real estate, and he succeeded in selling his neighbor's son's property, and everything went through okay, and would I please give Mr. Johnson a

chance to sell my property.

Q. Now, Miss Osin, prior to this time, the time that you ran into Johnson, did you have your property on the market for sale? A. Oh, yes.

Q. And what price were you asking for each property at that time?

A. 15,950.

7 Q. That's 15,950 dollars? A. Yes.

Q. For each property, is that correct? A. Each.

Q. Now, as a result of being told about Mr. Johnson, did there come a time when Mr. Johnson came to see you or you went to see him?

A. Well, he called me on the telephone to make an appointment. I had never seen him in person at that time.

Q. Then did you subsequently see him? A. Yes, to look the property over.

Q. At that time what, if anything, did Mr. Johnson tell you when you first met him as far as being a broker? A. Well, he said he was interested in seeing the property.

Q. Did he tell you that he was a licensed real estate broker? A. Oh, yes. He was recommended by this neighbor as a licensed real estate broker.

Q. Did you at that time give Mr. Johnson authority to sell your property to others? A. At that time I told him I wanted him to sell my property.

8 Q. Now, what transpired from that time on when you told Mr. Johnson that you wanted him to sell your property? A. Well, just about a week later he called me and said that he liked the property himself, he was very much interested in it, he wanted to buy it himself, he decided he would like to buy it himself, and made me an offer.

Q. And what was that offer, Miss Osin? A. That offer was, in view of I would have to take no down payment, he would pay me 15,000 dollars for each property, 1211 and 1213, and so --

Q. And were you to take back a first deed of trust on both properties? A. Provided I would take back a first deed of trust, yes, that was it.

Q. Now, I show you these two documents, Miss Osin, and ask you if

you can tell me what they are? A. That's the sales contract.

Q. And were they signed by Mr. Johnson? A. Mr. Johnson signed them at City Mortgage.

Q. And did you sign these particular documents, Miss Osin? A. No, sir, I did not.

9 Q. But he did give you copies of these originals or of these documents? A. That's right.

MR. HEFFELFINGER: Mark these as No. 2 and No. 3. Your honor, I might say for the record, and with the concurrence of all counsel, that as we proceed in this case there will probably be some fifteen documents, some of them may be photostat copies of the originals, and by stipulation at pretrial it is conceded that they may be admitted without formal proof.

THE COURT: Very well.

MR. HEFFELFINGER: Now, your honor, Plaintiff's Exhibit No. 2 is a sales contract, on a sales contract printed form, that is dated September 2, 1954, for premises 1211 L Street Northwest, which is signed by City Mortgage Company, president Robert H. Johnson, and Plaintiff's Exhibit No. 3, dated the same day, September 2, 1954, on a printed form of sales contract, for premises 1213 L Street Northwest, each contract providing for a total purchase price of 15,000 dollars, to be secured by a first deed of trust, payable at the rate of five percent, and a payment of 85 dollars a month in each particular case. I will show them to your honor in case you would like to see them.

THE COURT: All right.

BY MR. HEFFELFINGER:

10 Q. Now, Miss Osin, after obtaining these sales contracts from Mr. Johnson on September 2, 1954, can you tell us what conversations, anything of the sort, you might have had with Mr. Johnson between that time, September 2, 1954, and October 12, 1954? A. Well, he called me to come to his office, that he wanted to talk about improving the property and remodeling it so he could have a better income out of the property, and at the time or in between times he conferred with the district govern-

ment for there are laws against making those changes, and he wasn't allowed, they wouldn't allow him to make these rooms into efficiencies, and he felt pretty much upset about that. That's about all he talked about at that time.

Q. Now, directing your attention to November 12, 1954, did you receive a telephone call from Mr. Johnson? A. Before that I called up his secretary to find out if he was in the process of some kind of agreement or settlement. I just wanted to inquire where he makes his settlements.

Q. When you made that inquiry, what did they tell you? A. They told me that all settlements would be made at the District Title Company.

11 Q. Now, I ask you, on October 12, 1954, did you get a call from Mr. Johnson to come to his office the next day? A. I did.

Q. Now, did you go to his office the next day, October 13, 1954? A. I did.

Q. Now, where were these offices located? A. It was at 1420 K on the fifth floor.

Q. What, if any, lettering was on the door of those offices or rooms? A. City Mortgage Company.

Q. Now, on arriving there this day, October 14, 1954, did you go into Mr. Johnson's room or office in these offices of the City Mortgage Company? A. That's right, yes, right in his private room.

Q. Was he alone at that time? A. That's right.

Q. And did he have a desk in the room? A. Yes, he did.

Q. Now . . . what, if anything, did Mr. Johnson tell you that he wanted you to sign at that time? A. He wanted me to sign an agreement.

Q. And that was a sales agreement? A. Yes.

12 MR. O'DONOGHUE: I object to the last question and move that the answer be stricken -- was that a sales agreement -- because it is leading.

THE COURT: Well, I am going to overrule your objection now because I customarily allow a little leading in the interest of time, but try not to lead here any more, so I will overrule your objection.

BY MR. HEFFELFINGER:

Q. Now, Miss Osin, let me ask you this: On coming into his office, what did you do, just sit down at the desk? A. Yes, sir.

Q. And that was across from him? A. Right across from him.

Q. Now, what, if anything, was on that desk? A. There were a lot of papers. He was fumbling with a lot of papers there.

Q. Now, after telling you that he wanted you to sign a sales agreement, did he show you and tender to you some papers? A. Yes, he did.

Q. And what portion of them did you read? A. The top part.

Q. And what did it provide in substance? A. It said that I agree to sell the premises 1211 and 1212 L Street Northwest for the price of
13 15,000 dollars each, payable at 85 dollars a month, and to take back first trusts.

Q. Then, after reading that, what did you do with it? A. I gave it to him across the desk.

Q. To Mr. Johnson? A. Yes.

Q. Then what happened shortly after that? A. Well, he began explaining what a good reliable man he was in paying his monthly bills, and he would be reliable to pay the 85 dollars a month when he settled it.

Q. Well, then, did he tender to you at that time some paper? A. Yes, he did. He passed it back to me partly covered.

Q. Now, when you say he passed it back to you partly covered -- you say he did? A. Yes.

Q. I show you this paper, Miss Osin, and ask you if, using this table, if you will show thereon what portion of it was covered?

MR. HEFFELFINGER: Would your honor and other counsel like to see this?

14 THE COURT: Yes.

MR. HEFFELFINGER: Put it up here where his honor can see it while you show us.

THE WITNESS: Just like this.

THE COURT: The lower part of the paper was visible to you?

THE WITNESS: Yes, sir.

MR. HEFFELFINGER: For the record, show that she has covered

up this upper portion of this paper just immediately above the legal description of the property involved herein.

BY MR. HEFFELFINGER:

Q. Now, at that time, when he passed that to you, Miss Osin, what did he tell you to do, if anything? A. He told me to sign it.

Q. I see. And -- A. To sign the agreement.

Q. Now, showing you this particular document, Miss Osin, I ask you if that is your signature thereon? A. Well, it looks like it.

THE COURT: Well, is it?

THE WITNESS: It looks like it to me.

BY MR. HEFFELFINGER:

Q. Well, is it your signature, Miss Osin? A. I will have to say yes, it looks very much like it.

15 MR. FRIEDLANDER: I didn't hear what she said the second time?

THE COURT: She said she would have to say yes. I want to know, do you know whether that is your signature or not? You ought to know.

(No response)

BY MR. HEFFELFINGER:

Q. State, Miss Osin, if that is your signature, if you know? A. I will have to say yes.

Q. In other words, your answer is "yes"? A. (Nodding)

THE COURT: Don't nod your head. Speak up.

THE WITNESS: Yes.

MR. HEFFELFINGER: Please mark this Plaintiff's Exhibit No. 4. Your honor, Plaintiff's Exhibit No. 4 is a certified photostat copy of a deed dated October 13, 1954, running from the plaintiff, Mary Osin, to the defendant, Robert H. Johnson, on the property involved herein.

MR. FRIEDLANDER: Excuse me a minute, counsel. I wonder if we might call the court's attention to what was on the bottom there?

MR. HEFFELFINGER: May this be admitted, your honor?

16 THE COURT: It may be received in evidence.

BY MR. HEFFELFINGER:

Q. Now, Miss Osin, at the time that you signed this particular

document, what did you think you were signing? A. The sales agreement.

MR. FRIEDLANDER: We object to that, your honor, as to what she thought she was signing.

THE COURT: Overruled.

BY MR. HEFFELFINGER:

Q. In other words, you thought you were signing the sales agreement for these two houses? A. The sales agreement, yes, that I read the first part.

Q. All right. Now, after signing this document, did Mr. Johnson call anyone in to the office? A. He called a Mr. Simmons in.

Q. He called Mr. Simmons and he came in when you were still seated in the chair across the desk? A. No, sir. I got up to make room for him, and I was the only one sitting there, and I moved on the side.

Q. Did you see Mr. Simmons sign the front part of this document?

17 A. Yes, I did.

Q. Did Mr. Johnson then call anyone else into the room? A. He called the typist, she was sitting in the next room, Miss LaViscount, and she came in.

Q. Did she come into the room? A. Yes, she did.

Q. And what did she do when she came in the room? A. She signed down there.

Q. On the front page of it? A. Yes, sir.

Q. Now, did you at any time ever see her sign on the reverse or on the back side of this agreement? A. No, sir.

Q. Did Miss LaViscount ever at any time ask you if this was your act and deed? A. No, sir.

Q. Did she ever ask you if you acknowledged this to be your act and deed? A. No, sir.

MR. FRIEDLANDER: I would like to call the court's attention to the part which counsel says was uncovered.

THE COURT: Down to the description?

MR. FRIEDLANDER: And where it says "And the said party of the first part covenants that she will warrant specially the property hereby conveyed, and she will execute such further assurances of said land as may be requisite." That's the bottom part.

THE COURT: Yes, sir.

* * * * *

Q. Now, Miss Osin, after Mr. Simmons and Miss LaViscount had put their signatures on the front of this document, did Mr. Johnson, before you left, give you any other document or paper? A. He gave me the collection note.

Q. I show you this document and ask you if that is the document that you are referring to as the collection note? A. Yes, that's it.

Q. And at that time it didn't have on it the indication on the lower part, down here, is that right? A. No.

MR. HEFFELFINGER: This will be Plaintiff's Exhibit No. 5, which I am offering at this time.

MR. FRIEDLANDER: We would like to have the stipulation that L-803 and 804, Square 283, is the property that is involved here.

19 MR. HEFFELFINGER: Yes, your honor.

THE COURT: That's the same property. We have been identifying that by the street address, 1211 and 1213 L Street, haven't we?

MR. HEFFELFINGER: Yes, your honor.

THE COURT: But that's the same property?

MR. HEFFELFINGER: Yes, your honor. I think it will be much easier to do it that way each time.

THE COURT: The record will so reflect.

* * * * *

Q. Now, what did Mr. Johnson tell you to do with this collection note, Miss Osin? A. To keep it.

20 Q. Now, what, if anything, did you do with this collection note, Miss Osin? A. Well, I never keep any papers that I think are a little valuable, so I took it down to the First Federal for collection.

Q. And was that the same day if you recall? A. The same day.

Q. When you took that collection note down to the First Federal, I show you this next document and ask you if that is a copy of what you received? A. Yes, it is.

MR. HEFFELFINGER: That will be Plaintiff's Exhibit No. 6, please,

and I offer that in evidence at this time.

THE COURT: It may be received.

MR. HEFFELFINGER: And Plaintiff's Exhibit No. 6, your honor, is a copy of the collection agreement, by stipulation, from the First Federal.

BY MR. HEFFELFINGER:

Q. Now, when you left that note with the First Federal, Miss Osin, did you advise Mr. Johnson where it was? A. I did.

Q. And when did you advise him of that? A. It was the next day, I think.

21 Q. Now, what, if anything, did he say to you when you told him that you had taken the note to the First Federal? A. Well, he acted surprised.

Q. You say he acted surprised? A. Yes.

Q. Now, when you say he acted surprised, do you recall particularly anything he may have said to you then? A. What?

Q. When you say he acted surprised, do you recall anything particularly that he may have said to you that would lead you to think that he acted surprised? A. He thought he was going to make the payments there to me, and then, of course, to the First Federal, he would have to go down there.

Q. Did he tell you that over the phone, that he thought he was going to make the payments to you? A. Oh, yes.

Q. Now, Miss Osin, do you go to Florida annually for a short period of time? A. Yes, I have been going there eight or nine years -- since I had this trouble.

Q. That is in connection with your arthritis? A. That's right.

22 Q. Now, did there come a time in 1954 when you decided to go to Florida again? A. Yes.

Q. And when did you leave for Florida? A. Well, I was preparing to leave around Christmastime.

Q. Now, between the time that you left Mr. Johnson's office on October 13, 1954, and until Christmastime, or until you left for Florida,

did you ever have any occasion to call Mr. Johnson on the phone or see him after that during that period? A. I called him just before, it was in the early part of February, and I asked him just what he was intending to do, when the settlement was taking place.

Q. Did you tell him at that time that you wanted to go to Florida?

A. I did.

Q. And what, if anything, did he then tell you? A. He said, well, that would be fine, and he said just to "come to see me the minute you get back and I will settle everything."

Q. Then did you leave for Florida? A. (Nodding)

Q. And approximately when, if you know? A. I left the early part of February, I would say the 12th, or something like that. I just can't recall.

23 Q. Now, while you were down in Florida, Miss Osin, can you tell us approximately when you may have received some telephone call or some letter from anyone in connection with your property? A. I received, it was in March, I think, March 28th or 29th, I don't know, something like that, a phone call from Sergeant Smith --

* * * * *

Q. Then did you subsequently receive any letter from a representative of the district government? A. Yes.

Q. And -- A. A special airmail.

* * * * *

24 MR. FRIEDLANDER: Is this the one that was marked at pretrial?
MR. HEFFELFINGER: No, it is the letter that Mr. Rogers (?) has.
MR. FRIEDLANDER: I wasn't allowed to see it. I will have to see it.

THE COURT: You will defer the questioning until that is done.

BY MR. HEFFELFINGER:

Q. Now, as a result of the letter that you did receive, Miss Osin, did you subsequently write any letters to anyone? A. Yes, I did.

Q. To whom did you write? A. I wrote it to Hohenstein real estate.

Q. When you say Hohenstein, is that Hohenstein Brothers? A. Yes.

Q. I show you this document dated March 30, 1955, and another document dated March 30, 1955, and ask you if you will look at the signature appearing thereon and tell me if that is your signature and if you did write those letters? A. Yes, I did.

25 MR. HEFFELFINGER: May I have marked for identification at this time Plaintiff's Exhibits 7 and 8?

MR. FRIEDLANDER: I have no objection.

MR. O'DONOGHUE: I don't think anyone else has any objection.

THE COURT: All right, it may be received.

MR. HEFFELFINGER: Your honor, in lieu of reading them into the record, Plaintiff's Exhibit 7 and Plaintiff's Exhibit 8, I submit them to your honor.

THE COURT: All right.

BY MR. HEFFELFINGER:

Q. Now, Miss Osin, going back to the time when you originally bought these two properties, you did obtain a deed to those two properties in your name? A. Yes.

Q. Now, what, if anything, did you do with that deed -- the original deed? A. When he called me to come to his office in September, he asked me to bring the deed with me.

Q. And did you take the original of your deed to Mr. Johnson? A. Yes, I did.

Q. Did you leave it with him? A. Yes, he asked me to.

Q. And did you ever get it back? A. Never.

26 Q. Now, can you tell us, Miss Osin, whether you have ever been involved, prior to this occasion with Mr. Johnson, in any other real estate transactions? A. Yes, most everything was with Mr. Carder.

Q. Let me ask you this: Prior to October of 1954, how many real estate transactions would you estimate as having been engaged in? A. Oh, I think, all told, there were about seven or eight, something like that.

Q. And in these transactions would you buy a piece of property and pay so much down? A. Yes.

Q. And then later sell it? A. Mr. Carder.

Q. When you say Mr. Carder, who is Mr. Carder? A. Mr. Carder was a real estate broker that had offices in the Bond Building.

Q. Did he handle these transactions for you? A. Yes, sir, most every one.

MR. O'DONOGHUE: Your honor, I don't see the relevance of this, and I object. It is also leading.

THE COURT: It is relevant upon the extent of her knowledge of real estate transactions, but it is leading, and I wish you would refrain from that.

BY MR. HEFFELFINGER:

27 Q. Now, Miss Osin, in connection with these transactions that you indicated Mr. Carder was in, just to what extent would you participate in them personally? A. Well, he would contact the people and make the sale and handle everything. He did practically everything.

Q. Well, did you put up the money for the down payment of the purchase price? A. Yes.

Q. Then, when you would sell, where would you go to sell it? A. Mostly to the title company.

Q. Now, in this particular transaction with Mr. Johnson, Miss Osin, did you ever receive any first deed of trust? A. No, sir.

Q. From Mr. Johnson? A. No, sir.

MR. HEFFELFINGER: Your honor, I am offering at this time Plaintiff's Exhibit 9. That will be Plaintiff's Exhibit No. 9, please. Your honor, may I have Plaintiff's Exhibit No. 9 admitted?

THE COURT: It may be received.

28 MR. HEFFELFINGER: Now, your honor, this merely shows a certificate of the recorder of deeds' office that between June 15, 1953, and October 14, 1953, that Miss Osin was the record owner of the property, and it shows the subsequent filing of the first and second deeds of trust to the Perpetual and to the second trust holders in this case, and showing no first trust recorded for Miss Osin.

* * * * *

CROSS EXAMINATION

BY MR. O'DONOGHUE:

Q. Miss Osin, when you speak of having been engaged in six or seven or eight real estate transactions, you mean that you have owned at various times that many pieces of property? A. Yes.

Q. And you have bought those properties? A. With the help of Mr. Carder.

Q. Then later on you have sold some of them, is that true? A. Yes, three, I believe.

Q. Three of them you have sold? A. I think so. I didn't go into the details.

29 Q. Would it refresh your recollection if I suggested that there are five that you have sold from time to time? A. I didn't go into details if there is five. I don't know whether it was sold in my name alone.

Q. Or with anyone else? A. Well, the only things that I had that was involved with me, with my name alone, and they could be in the estate. You know, my parents have property, they are not living right now, and I am one of several heirs.

Q. And in those instances you have bought out the interests of the other heirs, is that true? A. Well, I think there was one brother, Victor, he moved away for his health, and he turned it over to the rest of us.

Q. He gave you deeds and you paid him for his share, is that correct? A. No.

Q. What? A. We didn't pay him any money, no.

Q. Well, did you give him deeds to other portions of your estate? A. We have a lawyer taking care of that. I don't know anything about it. I wouldn't know. We have a lawyer handling all that, the estate, Mr. Weiner.

30 Q. Did you buy the interests of the others in that estate? A. We didn't buy anything.

Q. Well, did you ever give any deeds on them? A. Not that I know of.

Q. When you speak of the estate, you mean to tell us that there

were no transactions in connection with that, is that so? A. There might have been, but, I mean, it was handled through the attorney.

Q. Did you sign any deeds or other documents? A. With the rest of the family.

Q. Now, in addition to that, is it not true that you have bought eight other pieces of property? A. It could be, yes.

Q. And you sold five of them? A. No, not five -- not that I know, if it was.

Q. Well, you remember one -- at 1323 Quincy Street Northwest? A. That wasn't solely mine. That was one part that was left to another brother and I.

31 Q. Isn't it a matter of fact that you bought that in June 1939? A. Well, my mother had purchased that in my brother's name and my name, and you will notice the two names, isn't it, on there? There's two names on there.

Q. And did you sell that in 1944? A. Yes, my brother decided he didn't want to keep it.

Q. And there was a deferred purchase money mortgage on that, Miss Osin? A. Yes, there was a debt on it.

Q. So that you received a deed of trust? A. Yes.

Q. And a promissory note? A. Yes, and there was also a lawyer taking care of that, too, and the real estate agent.

Q. Now, do you remember having sold 438 Fifteenth Street Southeast? A. Yes, through another agent.

Q. And was there a deed of trust on that when you sold it? A. Yes.

Q. What? A. I think there was a debt on that, too, yes.

Q. You took back a deed of trust? A. Yes.

32 Q. And a promissory note? A. And also through an attorney and the real estate agent.

Q. How about 731 Sheppard Street? Do you remember selling that? A. That's right. I think it was three.

Q. Three properties? A. That's through my name alone, that's what I was referring to, also through an agent and the lawyer.

Q. How about 747 Burnham Street? Do you remember selling that property? A. No, sir, not Burnham, in my name.

Q. You never owned that piece of property? A. Not Burnham Street, no, sir. There's some mistake, some error, somewhere.

Q. Do you remember buying a property like that from Eugene Roth for 10,000 dollars in 1946? A. That isn't Burnham Street, I am pretty sure.

Q. Well, what street was that? A. That might have been First Street. Was that First Street?

Q. You bought some property in November of '46, you think it was First Street, do you, rather than Burnham? A. I don't remember, but I know it wasn't Burnham. I am not familiar with Burnham Street at all.

33 Q. How about the property on First Street? Did you subsequently sell that? A. Yes, we did. That was with Mr. Carder's help, helping me, with that.

Q. And you received back a deed of trust in that? A. Yes, they took care of everything.

Q. Now, on the occasion or on the occasions when you bought that property, did you go to the title company? A. Yes, most all the time.

Q. And cleared up the settlement? A. Yes.

Q. And on every occasion where you sold property, you went to the title company, did you? A. Yes, sir, most every time.

Q. And whenever you sold it you signed the necessary deeds? A. Yes, sir, wherever they showed me to sign.

Q. And where you bought, did you ever give deeds of trust when you bought property? A. What do you mean, deed of trust, like a second trust, something like that, or first trust?

Q. Did you ever give back deeds of trust when you purchased property, or did you borrow money secured by a deed of trust? A. Secured by deeds of trust, yes.

34 Q. In each instance, where you bought property, was that true? A. Yes, sir.

Q. So that you have appeared in quite a few settlements, have you

not? A. Always with reliable people with me, yes, all the time.

Q. And on the occasion on October 13, 1954, when you went to Mr. Johnson's office, that was for the purpose of settlement? A. (Shaking head)

Q. Was it not? A. He did not state that. He said he had some papers he wanted me to sign -- some papers he had prepared and he wanted me to sign.

Q. What was your understanding of what you were doing at that time? A. I could not tell you, sir. I waited until I got in his office.

Q. Do you remember that he told you that it would be better to have the settlement at his office because it would save money? A. He said something about saving money, but he didn't state anything about settlement, because he had my deed there. I don't know what he was talking about.

35 Q. Do you remember testifying at the criminal trial of Mr. Johnson?
A. Yes.

Q. Back in October 1955? A. Yes.

Q. Do you remember being asked by Mr. Troxell, the assistant United States attorney, "What did Mr. Johnson say about coming to 1424 K Street to settle?" and your answer was "He told me he would save money if it was settled there." Do you remember that? A. He said something about saving money but he didn't make any statement when I was in his office.

Q. Did you give that answer to that question? A. What was that again, please?

Q. "He told me he would save money if it was settled there"? A. I think he said something to that effect.

Q. Do you remember making that answer? A. Yes, I did.

Q. And was that answer true? A. I think it is.

Q. Now, do you remember being asked by Mr. Troxell "What, if anything, did you say about going to his office rather than to a title company for settlement?" and your answer was "He said he would save money if I came to his office." Do you remember making that answer?

36

A. Yes, that's right.

Q. And that is true? A. That's right.

Q. Then there was the further question "Rather than going to a title company?" and your answer was "Yes, he said something to that effect"? A. To that effect.

Q. Now, then, I ask you again, you went there to his office with the intention of settling for the sale of this property, is that correct? A. Well, I wouldn't like to say for what purpose.

BY THE COURT:

Q. Don't you know why you went there? A. Well, he said he had some papers for me to sign.

Q. What papers? A. Some papers he had prepared.

Q. Papers relating to what? That's what I am trying to understand. A. Relating to the sale of the house. I had never been there to sign anything before. I had never signed any sales agreement whatsoever.

37 Q. What you thought you were going to do was to go there to sign some papers relating to the sale of these two pieces of property? A. To the sale, that's correct. I had never signed anything before.

BY MR. O'DONOGHUE:

Q. The sales agreement had already been signed before, had it not? A. I had never signed any sales agreement at any time.

Q. He had signed one, had he not? A. He had signed one, yes.

Q. Did he have it there for signature in your house? A. The only thing, September 2nd, he had that one.

Q. Now, on page 24, do you remember being asked "Directing your attention to October 13, 1954, did you go to his office on that date?" and your answer was "I think that was the date that -- the time I signed it." Question, "Did you go to his office for settlement on that date?" and your answer to that was "Yes, but settlement -- I couldn't understand what it was." A. I don't recall that statement.

Q. Did you make that answer? A. There wasn't any settlement to me.

38 Q. What? A. Not to my knowledge was there a settlement.

MR. HEFFELFINGER: What page are you reading from, Mr. O'Donoghue?

MR. O'DONOGHUE: Page 24 . . .

THE COURT: All right, gentlemen, let's proceed. Go ahead counsel.

BY MR. O'DONOGHUE:

Q. Now, do you remember being asked "How come that you were selling this property to Mr. Johnson and you didn't use the title company?" and your answer was "I will tell you why. I called his secretary before this so-called settlement, whatever it was, and I asked her what title company did they settle their cases in. That's the first thing I asked. And she said all our cases are settled in the District Title Company, and so I asked no more about it, and I know they were very reliable and in the past they have taken care of things very well. I have had no trouble." Now, do you remember making that answer? A. Yes.

Q. Then do you remember, at page 69, being asked "When you left Mr. Johnson's office on October 13, 1954, did you think you had signed the deed to the property?" and your answer was -- A. No, sir.

39 Q. -- "I didn't know what to think. It was a peculiar settlement." Do you remember making that answer? A. I may have said that, I don't know. I don't remember. I know I didn't sign a deed.

Q. I am sorry. I didn't hear you. You will have to talk louder.
A. I said I know it wasn't a deed I signed. I didn't know what it was. There was no settlement or anything to show it was a settlement or it didn't look like a settlement. There was no settlement sheet there.

BY THE COURT:

Q. What is a settlement sheet? A. Well, the title company always gives us a settlement sheet -- that's on every piece of property.

Q. What is it? What is it for? A. It's an adjustment of water and real estate taxes and all debts that has to be adjusted up to date. And there was no settlement sheet there at all and they usually give it to me.

THE COURT: All right.

BY MR. O'DONOGHUE:

40 Q. Did you inquire about that? A. No, I didn't.

Q. Did you ask any questions? A. No, I didn't. I still had in mind the neighbor had said he was a reliable real estate man and he had settled this neighbor's property okay -- everything went through straight and honest.

Q. Did you see him sign the deed of trust there? A. No, sir.

Q. You expected him to do that, did you not? A. I didn't know what to think.

Q. Did you expect him to record it for you? A. I didn't know. When the settlement came, I thought he would record it. I didn't know what he was talking about.

Q. Up to this time, Miss Osin, had this property been rented? A. It was rented off and on. It was rented when he took it over.

Q. It was rented when he took it over? A. Yes, sir, there was some people in there.

Q. In both pieces of property? A. Both pieces of property, yes.

41 Q. And you had been receiving the rents up to that time? A. He asked to collect my rents for me while I was in Florida.

Q. He asked to collect the rents for you? A. Yes, he did.

Q. When did that occur? A. When? After I signed that sale.

Q. Isn't it a fact that you had been receiving the rents for the property up until that time or up until October 13th? A. Up until October, it was weekly, it was paid weekly, yes.

Q. You had been receiving the rents for the property up until that time? A. Yes.

Q. And thereafter you received no rents for the property, did you? A. Well, the agreement was 85 dollars a month. I think that was in the rent, too.

Q. Beg pardon? A. That was some of the rents. He asked to collect the rents, too.

Q. You had a promissory note, did you not, that you received at that time? A. Yes.

42 Q. And it recited that it was secured by a deed of trust, did it not?

A. Yes.

Q. And you thought it was secured by a deed of trust, didn't you?

A. I thought it was.

Q. You did think it was? A. (Nodding)

Q. And you then deposited that promissory note for collection, did you not? A. That's right, because I didn't want to keep it, like he told me.

Q. The payments were made on that promissory note by Mr. Johnson, weren't they? A. I think there were three or four. I don't remember how many.

Q. Well, do you know whether it was three or four or five? A. I just don't know.

Q. They were made monthly, were they not? A. Yes.

Q. And the First Federal Savings and Loan Association credited that amount to your account there, did they not? A. That's right.

43 Q. And they notified you the payments had been made, didn't they?
A. They didn't notify me every month.

Q. Did they send you the proceeds of those payments? A. They did, yes.

Q. They did send you the proceeds of the payments? A. (Nodding)

Q. And you received them? A. Yes.

Q. Now, had the utilities at those houses been in your name prior to October 13th? A. Well, I think they had been in my name for about a month. That was all.

Q. For just about a month? A. Just about a month, yes.

Q. Did you put up a deposit with the electric company and the gas company when you did? A. Yes, that's right, I did.

Q. And after October 13th were those utilities transferred to Mr. Johnson? A. Yes.

Q. And you received back your deposit, did you not? A. Yes, I did.

44 Q. From both the gas company and the electric company? A. Yes.

Q. Now, with regard -- A. It might have been later than October 13th that I received it. I don't know the exact date.

Q. Well, it was shortly thereafter, is that true? A. It might have

been after that.

Q. Now, at the time you went to Mr. Johnson's office, did he hand you a paper? A. Yes.

Q. And did he hand you a paper that you signed? A. Yes, the one partly covered that I signed.

Q. Now, you say it was partly covered when he handed it to you?
A. The one that I signed.

Q. It was partly covered? A. Yes.

Q. And what was it covered with? A. Just a plain piece of paper.

Q. What was the size of that piece of paper? A. I don't know. It was -- he had it wound around it.

Q. Was it a little piece? A. Not all the way -- just partly.

45 Q. Just partly around? A. Just like a sheet of paper, yes, with just a little bend in that end.

Q. About what size? A. Oh, about a regular size.

Q. What? A. About a regular sheet size.

Q. Beg pardon? A. Regular sheet.

Q. Regular sheet size? A. Yes.

Q. You mean like this? A. There's a small sheet, smaller sheet, size like this but smaller. It was just about this long.

Q. Would you say then it was a piece of paper about what you would call letter size paper? A. Not quite that wide.

Q. It was not quite that wide? A. No.

Q. And how was it secured to the document that he handed you?
A. It wasn't secured.

Q. It was not secured? A. Just over it like that.

Q. When he handed it to you? A. Yes.

46 Q. You had to take hold of it, did you? A. No, he put it down right in front of me.

Q. I thought you said he handed it to you? A. With his help, yes, I put it down. He was still holding onto it.

Q. What would you call that? A. (No response)

Q. Well, would you say it was a little strip of paper? A. No, I

wouldn't say it was so small. It was almost that wide and it was a little thick.

MR. HEFFELFINGER: By that wide, have the record show that she referred to the letter size piece of paper which you held up previously.

BY MR. O'DONOGHUE:

Q. You wouldn't call it a little piece of paper? A. No.

Q. What? A. Oh, no.

Q. Do you remember, in the course of the criminal trial, being asked by the assistant United States attorney "Was there a piece of paper over that, over this Government's Exhibit No. 4?" and you answered "Yes, he had a little strip of white paper over it"? A. No, I don't remember of giving anything like that up there.

47 Q. You didn't say that? A. Not no little strip of white paper, no, sir, I never have.

Q. You didn't say that? A. Not to my knowledge, no, sir.

MR. O'DONOGHUE: May I have that exhibit -- the deed?

MR. McCARTHY: That's Plaintiff's Exhibit 4.

BY MR. O'DONOGHUE:

Q. This Plaintiff's Exhibit No. 4 is a single sheet of paper, is it not, Miss Osin? A. That's right.

Q. And did it have any kind of binder or backing on it? A. No, sir.

Q. It was just a single sheet of paper? A. (Nodding)

Q. Now, when he handed it to you, was it folded in any way? A. No, it was straight out this way.

Q. It was straight out? A. Yes.

Q. But it had a piece of paper sort of wrapped around it, is that your testimony? A. Just over it.

48 Q. What? A. Yes, just over it.

Q. Do you remember being asked, in the course of the criminal trial, "I am showing you this exhibit, Government's Exhibit No. 4" -- which is the same as this Exhibit No. 4 here -- that's the deed -- "does this look like the sale contract referring to Government's No. 4?" and you answered "No, not now, it looks like a deed, but he didn't have it open

like that when he handed it to me, it was sort of closed over like this." Do you remember saying that? A. I meant that the paper was over the top of it, that's what I meant, when I said it was closed over.

Q. That it was closed over? A. Yes, the paper was over the top of it. That's the only way I can remember saying that. That's what I meant.

Q. Now, did you read any part of it then? A. When it was closed over?

Q. Did you read any part of the deed that was handed to you? A. You mean, the bottom part, I read it.

Q. Did you read any part of it? A. No, sir, just the bottom where I was supposed to sign it.

49 Q. Well, half of it was exposed, is that your testimony? A. That's right. When I first came in there --

Q. Did you read any portion of it? A. -- I read the first part of it.

Q. You read the first part of it? A. The portion he told me that he had read the agreement.

Q. Did you read any more of it? A. No, sir, I didn't read the fine print.

Q. Did you read the description? A. No, I didn't.

Q. What? A. No, I did not.

Q. And did you read the part that is at the bottom, which was exposed, which says "And the said party of the first part covenants that you will warrant specially the property hereby conveyed and that she will execute such further assurances in said land as may be requisite"? A. No, I didn't read that.

Q. You did not read that? A. No.

50 Q. It was exposed, was it not? A. That was.

Q. So you could have read it? A. (No response)

BY THE COURT:

Q. Tell me why you didn't read it? A. I thought I was dealing with an honest real estate broker, as he represented himself and everything, and everything I had done in there, I thought I was dealing with that type of

person.

BY MR. O'DONOGHUE:

Q. Now, Miss Osin, do you remember being asked, in the court of the criminal trial, concerning this exhibit, "Did you read it?" and your answer was "I read part of it." Do you remember that? A. Was that the agreement? That's what I meant.

Q. No, I am referring to this exhibit, which is Exhibit No. 4, the deed.

MR. HEFFELFINGER: Show it to her, Mr. O'Donoghue. She doesn't remember one exhibit from another

THE COURT: No. 4 is the deed we have been talking about.

MR. O'DONOGHUE: This is the deed.

THE WITNESS: No.

BY MR. O'DONOGHUE:

51 Q. Do you remember being asked whether you read it and you answered "I read part of it"? A. That's what I meant, the agreement, I took it for an agreement. I took that for an agreement. All this was supposed to be was the agreement. I never dreamed that this was a deed -- never.

Q. Now, was the agreement in evidence at the criminal trial? A. The agreement?

Q. The agreement that he showed you at that time, this new agreement that you said you saw, when you went to his office? A. You mean at the criminal trial?

Q. Yes. Was that in evidence? A. I don't know for sure whether it was or not.

Q. Do you remember seeing that? A. (No response)

Q. Well, did you ever see it again after October 13, 1954? A. I might have seen it here. I don't know for sure. If I did, I would recognize it.

Q. Well, if I tell you that that was not in evidence, that no such document was in evidence, and you were referring to that document, and you were asked "Did you read it?" and you said "I read part of it." A.

Well --

Q. Then you were asked "Which part?" and you answered "Right in here" indicating? A. Well, that's what I thought was the agreement.

Q. And the further question was "Beginning where?" and you answered "Right here," and you were asked "How much was exposed?" and you said "This wasn't there, the 'deed' wasn't there, just describing the property, right here"? A. Well, yes, that's what I thought -- it wasn't the deed.

Q. All this was exposed, and you read that, is that your testimony? A. I was always referring to the agreement and never a deed to anything.

Q. Then you were asked further "In other words, you read this much?" and you said "Yes," and you were asked "Was the rest of it covered up?" and you answered "That's right, this wasn't right here, and then he says to sign over there"? A. I was still referring to the agreement -- never a deed. I had no idea that I was talking about a deed then.

53 Q. Miss Osin, were you not, in fact, at that criminal trial, pointing to an actual document that was in evidence and showing what part of it that you had read? A. The district attorney, I mean his attorney, had this covered when he showed it to me.

Q. Who had it covered? A. Mr. Sherry. When he brought it over, he had it covered when he showed it to me, and he asked me which part.

Q. I am asking you, Miss Osin, if this was not, in fact, the document that you were pointing to in the criminal trial when you showed what part that you had read? A. Not the deed, no, sir.

Q. Let me ask you this then: You say that he showed you a sales agreement when you went to his office? A. That's right.

Q. And was that covered up by anything then? A. It wasn't when I went in there.

Q. Now you say, when you referred to something that was covered up, you were referring to the sales agreement, is that correct? A. The paper he handed me to sign, that he was holding onto, that's the one I am referring to.

54 Q. Isn't it a fact, Miss Osin, that in all this testimony about what

you were referring to, it was referring to that deed and not to any sales agreement? A. No, sir, no deed. I never saw the deed.

Q. Did you ever see the sales agreement again? A. Not that I know of.

Q. You didn't see it at the criminal trial, did you? A. It might have been there but I don't remember seeing it.

Q. You don't remember seeing it? A. No.

Q. But you remember seeing this, don't you? A. He had that covered up when he showed it to me.

Q. Oh, at the trial it was covered? A. Mr. Sherry showed me how it was covered.

Q. Do you mean to say you didn't look at this and say this part about this deed was covered up? A. No, sir, I never mentioned the deed

Q. You mean to tell me, at the criminal trial, as well as at Mr. Johnson's office, portions of it were covered up? A. He didn't show me the deed like that.

55 Q. Who didn't show you the deed like that? A. Mr. Sherry, as well as I remember. I can't remember every little detail.

BY THE COURT:

Q. Do you testify now that, when you were examined at the criminal trial concerning this deed, that the deed was there covered up, as it was covered up by Johnson when you signed it in Johnson's office? A. He showed me how it was covered up, yes, sir.

Q. The United States attorney or the assistant United States attorney, he is the person who showed you how it was covered up, or did you show him how it was covered up? A. No, I didn't show him. He showed it to me.

Q. Who did? A. Mr. Sherry, he is present right now, he showed it to me.

MR. HEFFELFINGER: Your honor, if Mr. O'Donoghue wishes me to, I will stipulate that all of her testimony in the criminal trial be admitted.

MR. O'DONOGHUE: I am not after any stipulation, your honor.

THE COURT: No, I don't think that is proper. I think her answers here may well go to her credibility and I think counsel is entitled to examine her on it. Proceed.

56

BY MR. O'DONOGHUE:

Q. You talked about Mr. Sherry. Who was he? A. I think that's the gentleman sitting over there -- right over here.

Q. What part did he play in the criminal trial, ma'am? A. I think he was attorney for Mr. Johnson.

Q. Is he here now? A. Yes, sir, sitting right over there.

THE COURT: Do you gentlemen stipulate, for my information, what part Mr. Sherry played in the criminal trial, if any?

MR. O'DONOGHUE: He was the defendant's attorney. I have never seen him before.

MR. HEFFELFINGER: Yes, he was defense attorney for Mr. Johnson at the criminal trial.

THE COURT: Now, to clear that up a minute, I would like to go further with you. I don't like to break into counsel's examination, but I want to know something about this.

BY THE COURT:

Q. Do you remember a United States attorney named Mr. Troxell?
A. Troxell, yes.

57 Q. Did you have a United States attorney named Troxell examining you in the criminal trial? A. Yes, sir.

Q. Did he show you the deed? A. (Shaking head)

Q. Did he examine you about it -- A. No, sir.

Q. -- at the criminal trial? A. No, he just asked me if I had signed it. That's all.

THE COURT: All right.

BY MR. O'DONOGHUE:

Q. Now, when you were signing this Plaintiff's Exhibit No. 4, did you ask what it was that you were signing? A. No, I didn't.

Q. Did you read a portion of it then? A. Are you referring to the deed here?

Q. Yes, I am. A. You mean right then and there at the trial?
Are you speaking of the trial?

Q. No. A. Or in his office?

Q. I am talking about in his office. A. I read the first portion of the agreement, when I came in there, that he gave to me.

58 Q. I am asking you about Exhibit 4. A. There was no deed in front of me.

Q. In Mr. Johnson's office, did you read any portion of it? A. Of the deed, no, sir.

Q. You did not read any portion of it? A. There was no deed.

Q. And so when you were referring to the portions you read here and testifying in the criminal trial, you were not referring to the deed?
A. Not the portion that I had read, yes, sir.

Q. However, you were pointing to some document, were you not?
A. The agreement that was for me.

Q. And was that agreement in the criminal trial? A. Well, there were so many there, I just couldn't say exactly. It could have been there. I don't know. The table was full of them.

Q. Would it refresh your recollection if I said that all of this testimony, when you were pointing to what you read, was referring to the deed in your testimony at the criminal trial? A. No, sir.

Q. It would not? A. No.

59 Q. So you don't remember saying at the criminal trial that you had read a portion of the deed, nor do you remember pointing out portions of the deed which you had read, is that your testimony? A. I don't think it was the deed that the district attorney asked me about. I think it was that sales agreement that I had read. That's what I was referring to.

Q. Did you see that deed in the course of the criminal trial? A. I don't recollect. He might have handed it to me and asked me had that been my signature, that's the talk on that, that's the only thing he asked me on the deed, but he didn't say "Did you read a portion of the deed?"

Q. You don't remember being cross examined by Mr. Sherry, sitting here, as to whether you read the deed or not? A. No.

Q. You don't remember that? A. I remember him holding it up partly covered.

Q. Now, did you pick up this deed when you were at his office? A. No.

60 Q. You did not? A. We just left it set in the same position.

Q. Beg pardon? A. No, I didn't pick it up.

Q. Did you pick up any document? A. I picked that sales agreement up that he had made, that he had given me, when I first entered there and read it -- I read the first portion of it.

Q. Do you remember giving any testimony in the course of the criminal trial about having read any sales agreement in his office on October 13th? A. I don't think he asked me that.

Q. And although you explained everything that occurred in the office while you were there, you did not mention the sales agreement? A. No, but I thought he took it for granted.

Q. In other words, this is the first time you have mentioned that? A. Why, I don't think he -- I just said yes and no like that. He didn't ask me a lot of things. He didn't ask me to explain.

Q. In the course of the criminal trial, you were not asked to explain the details of this transaction? A. That's right. He didn't ask me a lot of things that he could have asked me about them.

61 Q. Now it was your understanding when you left his office that day that you had completed a sales of this property, is that not correct? A. When I left his office that day?

Q. Yes. A. Completed a sale?

Q. Yes. A. That was a sales agreement, so I thought it was just a sale, yes, sir.

Q. And you thought it was a settlement, did you not?

MR. HEFFELFINGER: She didn't say that.

THE COURT: I heard what she said.

THE WITNESS: I said sale and I thought that was when I sold the house -- I didn't know, just sale -- I didn't say anything about settling.

BY MR. O'DONOGHUE:

Q. Just the same as you had disposed of various other pieces of property? A. In the title company.

Q. Just the same as when you had the settlement at the title company?

MR. HEFFELFINGER: She didn't say that.

THE COURT: I know she didn't but he has a right to question her further on that.

BY MR. O'DONOGHUE:

62 Q. You thought the property was then his and no longer yours, is that not correct? A. Well, I thought that he was going to take care of it until the time of settlement.

MR. HEFFELFINGER: What do you mean -- take care of it?

THE WITNESS: Well, I mean, pay so much. He had to collect the rents from the people that were in there. He said he would improve it and take care of it.

BY MR. O'DONOGHUE:

Q. You say you called him the next day and said you had deposited the note? A. For collection.

Q. That's this note for what you call collection at the First Federal? A. Yes.

Q. Did you call him after that until February? A. I called him one other time and also mentioned settlement right after Christmas, and he was busy and I was busy, and I said "Well, I will call you again." Then I called him again before I left for Florida.

Q. By the way, did you mention any such conversation as this in the course of the criminal trial? A. They didn't ask me. It was very short and terse.

63 Q. Weren't you asked what further conversations you had with him and you mentioned only this one when you called him the next day? A. I didn't hear that -- all of it -- I mean, there might have been many conversations all the way there.

Q. You made no further effort to sell this property, did you? A. When was that? You mean after?

Q. After October 13th. A. No, I thought it was in reliable hands.

Q. You thought the sale was, in fact, complete, and you thought that when you went to Florida, didn't you? A. In the settlement, in my settlement there, it says I expected to have the settlement, to be paid \$30,000 in cash, that's the settlement, and he would settle everything when I got back -- that's his words.

Q. Don't you remember saying in these letters that you wrote on March 30th that "I sold my property to Mr. Johnson"? A. Well, that's the sales agreement that I signed. I thought that was it.

64 Q. "And have taken back first trusts on the property"? A. That's the way the agreement read -- I was going to take that.

Q. In other words, you thought you had taken back that first trust on the property, isn't that true? A. In the settlement we would have -- when the settlement taken place.

Q. But you have "I have taken back first trusts on the property"? A. That's the way I expressed myself because they asked me a lot of things.

Q. And you thought that first deed of trust, the first trust that you had taken back, had been, in fact, filed by Mr. Johnson with the recorder of deeds, did you not? A. No, sir, I didn't know anything about it.

Q. You didn't know? A. I didn't know what I had done -- no, I didn't.

Q. But you thought that he had? A. After the settlement had taken place, naturally he would have.

Q. And you relied on him to do that, didn't you? A. I relied on him to do everything straight, fair and square.

65 Q. And he didn't? He didn't record that deed, did he? A. I never saw a deed of trust or anything.

Q. If you took it back, you didn't see it? A. I did not see a thing. I never saw a thing.

Q. Didn't you say in this letter to Hohenstein Brothers "I sold my property at 1211 and 1213 L Street"? A. That's the way I expressed it. I didn't know what it was all about. That's why I had been to get Mr. Heffelfinger, the attorney.

Q. And didn't you say "I have taken back first trusts on the property"? That's in Exhibit 7. A. Well, that's the way I expressed it in that letter. I don't know.

Q. That was your understanding that you had, in fact, taken back a deed of trust at that time? A. I hadn't seen any deed of trust. I hadn't seen anything.

Q. No, because you thought he had recorded it, isn't that correct? A. I didn't know what he had done. I wouldn't like to say because I don't know what Mr. Johnson had done.

Q. When you signed this deed, he didn't say anything about it, did he? A. He never said a word.

66 Q. He just handed it to you sign? A. I thought it was just a sales agreement.

Q. He made no representations about it one way or the other? A. No, sir.

* * * * *

BY MR. FRIEDLANDER:

Q. Miss Osin, I failed to get the name of the gentleman that you said introduced you or recommended Johnson to you? A. He was well known in the neighborhood, and everything called him by his first name -- Mike.

Q. What was his full name? A. It was a long name, I just don't recollect his last name, but everyone in the neighborhood called him that. I had been living there for thirty years or more.

Q. You don't know his name? A. I don't know his last name.

67 Q. You don't know his last name? A. I have heard it though.

Q. How long had you known him? A. About three or four years off and on.

Q. How well did you know him? A. Well, I knew him to be a very reliable man. Everybody trusted and respected him in the whole neighborhood.

Q. Had you ever had any transactions or business dealings with this gentleman whose last name you do not know? A. No.

Q. Did there come a time when he recommended you to Mr. Johnson? A. Yes, sir.

Q. Do you recall when that was? A. It was, I guess, the early part of August.

Q. And how many times did you see Johnson between that time, when he was recommended to you, and the September date where he submitted to you a contract of sale? A. Let's see. The first time I ever met him in my life was when he called me over the telephone and made an appointment to see the premises.

Q. When was that? A. That was the latter part of August.

68 Q. How long after that time, when you showed him the premises, elapsed before you saw him again? A. It was September the 2nd.

Q. That's the date that he brought the contracts to you? A. That's the date that he signed it. He said he wanted to buy the property.

Q. I show you Plaintiff's Exhibits 2 and 3 and ask you if those are the papers that were presented to you by Mr. Johnson? A. (No response)

Q. Well, what date do they bear -- September 2nd 1954? A. Yes, sir.

Q. Now, you know they are carbon copies? A. Yes, sir.

Q. Where are the originals? A. I wouldn't know.

Q. How many papers did he present to you? A. These two.

Q. Is it your testimony that he only brought you a carbon copy of each contract? A. This is what he gave me.

Q. Well, then your testimony is that he did not present the originals of any of the contracts? A. No, that's right.

69 Q. Just the carbon copies? A. That's all.

Q. Did he have in his hand, at the time he presented those papers, any other papers which he retained? A. I don't know whether he did or not.

Q. Do you recall whether you accepted or rejected his offer? A. I accepted his offer.

Q. And how did you manifest that acceptance -- in writing or orally? A. It was over the telephone -- orally.

Q. And how long after September 2nd, the date of these papers, was

that? A. I don't recollect the exact date -- I mean, it might have been a week or more.

Q. So that was approximately a week after September 2nd 1954, on the telephone, you told him you accepted his offer? A. Yes.

Q. Now, is it your testimony that he did not at any time request your signature on that date, a week later or shortly thereafter? A. No, sir.

70 Q. Did he bring any paper to you to sign? A. No, sir.

Q. Did he ever call upon you again? A. At that one time, to sign some papers, a little before.

Q. Did he come to your place? A. No, sir.

Q. When these papers were presented to you, I understood he came to your place and gave them to you? A. Oh, no.

Q. You went to his office? A. He called me to come there.

Q. On that occasion were there any papers that were covered over?
A. I don't recollect. He could have had papers there.

Q. How many times did you sign your name on the 2nd of September?
A. I didn't sign my name.

Q. How many times did he sign his name to the papers which he gave to you at that time? A. He signed these.

Q. The carbon copies of the contracts? A. Carbon copies, yes. He signed these.

Q. And you don't know anything about the originals? A. No, sir.

71 Q. Were they typed in your presence or were they read for you when you came in? A. Yes, we were reading them.

Q. Now, will you tell us, please, after this contract was accepted by you, did you have any meetings with him at the property or at your place? A. Only at the property, yes, when he called me, and he explained about this district government -- he wanted to fix the place up.

Q. Was that before October 13th or after October 13th? A. Oh, yes, before.

Q. Before? A. Yes, sir.

Q. Now, after that time did you have occasion to turn the keys to

the property over to him? A. He had them all the time.

Q. When did he get them? A. He had them before this -- I mean, after -- that's before the other one.

Q. When did you give them to him? A. Before October 13th.

Q. I say, when? Do you remember when you gave them to him?

A. No, it was a little before.

72 Q. Do you know where you were when you gave him the keys? A. I think it ~~was~~ in his office, when he was explaining about the district zoning.

Q. That was before October 13th? A. Yes, sir.

Q. And it was after September 2nd? A. Yes, sir.

Q. What arrangements did you make with the electric light company to turn off the electricity that was in your name? A. Well, these people were in there, and I told him --

Q. I say, when? A. I don't know the exact time.

Q. Was it on October 13th or 14th 1954? A. It could have been before that -- I'm not so sure.

Q. Now, will you tell us, please, how much rent you were getting on these two properties before or prior to October 13th? A. Well, I couldn't say the exact amount because they were paying by the week, and some of the rooms rented for twelve, ten or twelve, dollars a week, and they were not all occupied, they would move in and out, so I just wouldn't know.

Q. Who was collecting rents for you? A. (No response)

Q. This Mr. Johnson, when did he start collecting rents? A. He was collecting them before October.

Q. Before September 2nd? A. Oh, no, not before that.

Q. When did he first start collecting rents on the property? A. I think it was a little before October.

Q. A little before? A. Yes.

Q. On what occasion was it that you told him to collect the rents and how did you indicate to him he had the right to collect the rents?

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74 THE WITNESS: I thought he was just as good as any other real estate man because he was so highly recommended through these other people, selling her son's property and everything. If you took him to be all right, so why shouldn't I?

BY MR. FRIEDLANDER:

Q. Well, he collected those rents. When did you indicate to him that he could collect the rents, and where were you when you did it? A. I was in town then.

Q. At his office or at your place? A. No, at his office.

Q. What occasion was it that you visited his office for the purpose of having him collect the rents for you? A. That's when he was trying to remodel the place, or trying to talk about remodeling it, anyway.

75 Q. Would you tell us the approximate date of that? A. I couldn't say exactly. It was after this.

Q. After September 2nd? A. Yes.

Q. And before October 13th? A. Yes, sir.

Q. Now, how did you manifest your intention that he was to collect the rents -- what did you give him? A. Well, I give him the key.

Q. And how did he know who the tenants were and how much to collect each week from them? A. I told him -- there was a manager there -- pardon me, there was a manager there.

Q. Who was the manager? A. He met the manager.

Q. On what occasion did he meet the manager? A. When he was looking the property over.

Q. That was before September 2nd? A. Yes, sir.

Q. Now, on that occasion did you give him a list of the rents? A. No, sir.

Q. Is it your testimony that he presented to you a contract on September 2nd, and at that time he didn't know what the rents were? A. That's right.

76 Q. I beg your pardon? A. I didn't give him a list. I just told him orally.

Q. After you told him orally how much the rents were, did you tell

him to talk to the manager and get the names of the tenants? A. Yes.

Q. Is that right? A. I don't know whether he did that or not.

Q. Well, now, did the manager collect the rents for you while you were the owner? A. The manager did, yes.

Q. Did the manager collect the rents after October 13th to your knowledge? A. I wouldn't know.

Q. Well, you know very well that Mr. Johnson collected the rents after October 13th, don't you? A. Mr. Johnson did.

Q. And you told him to, didn't you? A. He asked me when he collected them.

BY THE COURT:

Q. When he asked you, did you tell him yes or no? A. I told him, yes.

THE COURT: All right.

77

BY MR. FRIEDLANDER:

Q. After you told him he could collect the rents, did he ever make an accounting to you of the rents he collected? A. No, sir, he never did.

Q. Have you ever at any place complained about Johnson's collecting the rents which were due you? A. No.

* * * * *

MR. HEFFELFINGER: Your honor, at this time I am going to make this request or proffer to the court, in connection with three different portions of this plaintiff's testimony as a witness in the criminal trial. Mr. O'Donoghue asked her a question in connection with a little piece of paper, for instance, that was over this Plaintiff's Exhibit No. 4. I think I should be entitled to ask her all of the questions in connection with that testimony leading up to that covering with a piece of paper and her answers thereto.

THE COURT: I will permit you to do that.

(Discussion)

78

THE COURT: All right, give it a trial. I don't want to interrupt this testimony here.

REDIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Now, Miss Osin, in connection with your testimony at the criminal trial of Mr. Johnson, I ask you if the following questions were not asked you and you made these answers:

Question, "Had he agreed to give you a deed of trust?" "Yes, that's the only way I would sell the property."

* * * * *

BY MR. HEFFELFINGER:

Q. Miss Osin . . . I ask you to look at Plaintiff's Exhibit No. 4, which is the deed that you did sign apparently. Now, I ask you if in the criminal trial if this wasn't the document that you did answer and refer to as being the one that you signed but that was partially covered up?

A. That is correct, yes.

79 Q. Now, Miss Osin, referring to your letter, Plaintiff's Exhibit 7, of May 30, 1955, addressed to Hohenstein Brothers, Mr. O'Donoghue asked you if your language, what you meant, you said it was the way you expressed it "I sold my property at 1211 and 1213 L Street Northwest to Mr. Robert Johnson."

* * * * *

Q. "I have taken back first trust on the property, and it is with the First Federal Loan and Trust Company, for collection, at 85 dollars a month."

80 Now, did you mean there that you had taken back first trust on the property and it was with the First Federal Trust Company for collection, and that that was the collection note that was at the First Federal Loan? Were you referring to the note there that they had? A. The note, yes.

Q. All right. Now, you say he seems to have gotten mixed up with the district government after a building inspection, and now they are really checking on him, and I think he recorded a deed from my name to his. Now, what did you mean by that -- that he had taken the original of your deed and had recorded the property in his name from your original deed? A. That's the only way I know. I know he had recorded it. I never signed the deed. That's the only way I could have known it.

Q. But you were under the impression, when you wrote this letter, that he had taken your original deed and had transferred the property to himself that way? A. That's the only way I could think of.

MR. HEFFELFINGER: All right.

BY THE COURT:

Q. How would he do that? A. I don't know, not unless he could have copied it.

81 Q. Assuming he had your deed -- the deed into you? A. Yes, sir.

Q. That's the deed that you are talking about, is it? A. My deed.

Q. The deed by which you acquired title to the property? A. Yes, sir.

Q. How could he take that deed and transfer the property into him? How did you think that could be handled? A. The only way that I know of, he could have copied it.

Q. That would be forging a deed to himself, wouldn't it? A. I don't know. I was all confused.

THE COURT: I am a little confused too about it.

MR. HEFFELFINGER: That's a point I will make in my argument about the context of both these letters of hers. Even at that time this woman is under the impression that this man secretly had gotten title in his name from the deed that she gave him.

THE COURT: It is very difficult for me to see how she could have that impression.

82 MR. HEFFELFINGER: She may have had that impression. I think, by reading that letter, your honor could see at that time that she realized or thought in her own mind that there was never any deed, but that's how he got it.

* * * * *

MR. HEFFELFINGER: * * * Question, "Yet you don't recall that you signed this deed?" "No, it was a sales agreement that I take back a deed of trust."

83 "Was there a piece of paper over this deed, over this Government's Exhibit No. 4?" "Yes, he had a little strip of white paper over it."

"After you received this promissory note, which is Government Exhibit No. 3, at the same time that you signed this document, which is Government Exhibit No. 4, you left the office, Mr. Johnson's office, did you?" "Yes, I did."

Now, on page 55 of your copy of the transcript, Mr. O'Donoghue:

"How come that you were selling this property to Mr. Johnson, you didn't use the title company?" "I will tell you why. I called his secretary before this so-called settlement, whatever it was, and I asked her what title company did they settle their cases in. That's the first thing I asked. And she said, all our cases are settled in the District Title Company, and so I asked no more about it, and I know they are very reliable, and in the past they have taken care of things very well. I have had no trouble."

"I believe I asked you why you didn't settle this property at a title company?"

84 "That's what I am telling you. I thought it would be settled in a title company. I didn't know what kind of a settlement he had up there. He didn't mention signing a deed or anything at the time I was up there. He never mentioned a deed and I didn't see my first trust. I didn't know what kind of a settlement it was. I didn't know what to think. I just didn't know what to think of it."

* * * * *

MR. HEFFELFINGER: * * * "Did you know what this was?" "It was a sales contract. It looked like an agreement."

"Does this look like a sales contract, referring to Government Exhibit No. 4?" which I think you will concede for the record is the same as our substitute in this case, the deed?

MR. O'DONOGHUE: Yes.

MR. HEFFELFINGER: "No, not now. It looks like a deed, but he didn't have it open like that when he handed it to me. It was sort of closed over, like this."

85 "Did you read the document?" "I read it there. It was the agreement. That's an agreement."

"Would you say you read as much of the document as is disclosed now?" Indicating. "Well, it didn't look exactly like that, the one I read."

"In other words, do you or do you not know whether you signed this document?" "Well, that's my name."

"That is your name?" "That's right."

"I am asking you not whether that is your name. Do you or do you not know whether or not you signed this document? Can you say positively that you signed your name to this?" "Yes."

"Did you?" "I did, but I didn't know it was a deed at the time I signed it."

"Did you read it?" "I read part of it."

"Which part?" "Right in here." Indicating.

"Beginning where?" "Right here."

86 "How much was exposed?" "This wasn't there, the deed wasn't there, just describing the property, right there."

"In other words, you read this much?" "Yes."

"Was the rest of it covered up?" "That's right, this wasn't right here, and then the witnesses signed over there."

"Did you ask what you were signing?" "He didn't say. He just said 'Sign it,' and I thought it was all in connection with the agreement."

I have no further questions.

* * * * *

ROY L. JONES was called and sworn as a witness and then testified as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. * * * A. Roy L. Jones.

Q. With whom are you associated or working, sir? A. Perpetual Building Association.

87 Q. And in October 1954 were you so employed? A. I was.

Q. In what capacity, sir? A. Loan appraiser.

Q. Are you here in connection with a subpoena issued by my request that you bring the originals of certain documents with you, sir? A. I am.

Q. And do you have those documents with you, sir? A. They are in the court room, yes.

* * * * *

89 THE COURT: Do you stipulate that Mr. O'Donoghue's client is a purchaser for value without notice?

MR. HEFFELFINGER: Yes, sir.

THE COURT: You so stipulate?

MR. HEFFELFINGER: Yes, sir.

THE COURT: Well, tell me your purpose in this?

MR. HEFFELFINGER: Plaintiff's Exhibit No. 10, which I have had marked for identification, your honor, is an application for a loan in the name of Robert H. Johnson, which will show on the application that there were no encumbrances against the property, that the application was filed or received by them on October 12th, the day before he has the plaintiff in his office, that the property was appraised on October 13th, the day she was in the office, and I submit, your honor, that that is all evidence to show the intent to defraud on the part of the defendant Johnson.

THE COURT: I am convinced about the intent to defraud, counsel. So far as I am concerned, you don't have to prove his intent to defraud to me. I think everybody agrees about his intent.

MR. O'DONOGHUE: There is a default against him in this case.

90 THE COURT: Yes, but I would certainly think there would be no issue raised about the intent to defraud.

MR. HEFFELFINGER: That was my sole purpose in connection with Exhibit 10.

THE COURT: I am inclined to take judicial notice about that fact.

MR. HEFFELFINGER: Your honor, I think we can move along very rapidly then. May I read into the record or have marked for identification and also offer in evidence, to show the complete chain, the various exhibits under the subpoena as far as Perpetual is concerned?

THE COURT: Are they all for the purpose of showing bad faith and intent to defraud of Johnson?

MR. HEFFELFINGER: Your honor, they are offered for that purpose,

and also to show that as a result of the application for the two first deeds of trust to Perpetual that there was, of course, a settlement at the title company, that they received their first deeds of trust when they were recorded, the notes of Johnson representing the obligation under the deeds of trust, the two different checks of Perpetual Building Association to be used in the settlement with Johnson in connection with the first trusts, and that he received the proceeds of those first trust loans.

* * * * *

93 MR. HEFFELFINGER: Now, your honor, briefly, Plaintiff's Exhibit No. 10 is the application for loan filed on October 12th with the Perpetual Building Association by Robert H. Johnson showing at that time that the property was unencumbered.

MR. O'DONOGHUE: I stipulated, your honor, that they could go in and that they will then speak for themselves.

THE COURT: Let them go in.

MR. HEFFELFINGER: Plaintiff's Exhibit No. 11 is one of the first deeds of trust running from Robert H. Johnson to Samuel Scrivener, Jr. and Junior F. Crowell, as trustees, to secure the Perpetual Building Association.

Plaintiff's Exhibit No. 12 is another deed of trust running from Johnson to the same trustees, to the Perpetual Building Association, to secure a loan of the other two properties.

94 Plaintiff's Exhibit No. 13 and 14 are checks dated October 19, 1954, of the Perpetual Building Association to the District Title Company, referring to loan account No. 144-8661 of Johnson, for premises 1211 and 1213 L Street Northwest.

Plaintiff's Exhibits 15 and 16 are the deed of trust notes dated October 18, 1954, in the sum of \$5,500 each, each, executed by Robert H. Johnson, to secure the building and loan association in connection with the deeds of trust.

* * * * *

CROSS EXAMINATION

BY MR. FRIEDLANDER:

Q. Mr. Jones, from your experience, in the practice of applying for and make of trust loans, is it unusual for prospective purchasers to apply for loans before the purchase? A. Before the purchase?

Q. Yes, before the actual sale? A. No, it is not unusual.

95 Q. Would you say it was the practice to make applications for loans before settlement? A. Definitely.

MR. FRIEDLANDER: That's all.

REDIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Now, Mr. Jones, you say that applications for loans were made before the settlement. Is that a general rule, would you say, when property not owned by an individual exists? A. On property not owned by the individual?

Q. Yes. A. Which is being sold?

Q. Let me put it this way: You normally have, do you not, applications for loans prior to any settlement at the title company, is that correct? A. That is correct.

Q. Now, in what percentage of those cases are the applications for loans filed by people who at that time actually have the deeds in their names? A. That isn't -- I mean, as far as percentagewise is concerned, I don't know how often it goes -- it probably is very seldom. The majority of the applications that we receive on any property that we make a loan

96 on are received prior to the instructions going to the title company to prepare the notes and deeds of trust for that particular loan.

Q. But as a result the applications are made in the name of the people who are then the owners of the property, are they not? A. Not necessarily, no.

Q. How often are they made when they are not the record owners of the property? A. I can't answer how often. When we receive the application, when inspecting the property, and in the individual whose name appears on the application, we don't know whether or not they are the intended makers of the loan or whether or not they are agents applying for the loan.

* * * * *

97 LOUIS H. LANCASTER was called and sworn as a witness and then testified as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Mr. Lancaster, will you please state your name? A. Louis H. Lancaster.

Q. And are you connected with the District Title Insurance Company? A. I am.

Q. Are you here in response to a subpoena to produce certain records in connection with the Osin-Johnson transaction? A. Yes, sir.

Q. And you have them here? A. (Nodding)

* * * * *

98 MR. HEFFELFINGER: Your honor, Plaintiff's Exhibit No. 17 is a check of the District Title Insurance Company dated October 19, 1954, payable to the order of the City Mortgage Company in the sum of \$275.

Plaintiff's Exhibit No. 18 is a check of the District Title Insurance Company dated October 19, 1954, payable to the order of Robert H. Johnson in the sum of \$535.11, which bears the endorsement of Robert H. Johnson, 1217 L Street Northwest.

Plaintiff's Exhibit No. 19 is on the letterhead of the City Mortgage Company dated October 18, 1954, addressed to the District Title Company, attention Mr. Marcellino, directing and authorizing the payment of this check to the City Mortgage Company in the sum of \$275.

Plaintiff's Exhibit No. 20 is the settlement sheet of the Perpetual Building Association in connection with the two first trusts on premises 1211 and 1213 L Street, each first trust running to the Perpetual Building Association.

BY MR. HEFFELFINGER:

Q. Now, Mr. Lancaster, I believe these are copies, photostat copies, of the originals which you are under subpoena to produce?

* * * * *

100 MR. HEFFELFINGER: Now, might I also have counsel's stipulation

to this -- I have subpoenaed Mr. Marcellino, who was the settlement clerk, in connection with the settlement of the first deeds of trust as well as the second -- will you gentlemen stipulate that Mr. Marcellino would identify the two settlement checks from Perpetual Building Association to their order, which were deposited, and, of course, the proceeds paid to Mr. Johnson; and that he would also identify the deeds of trust to the Perpetual Building Association as being first deeds of trust; and that, of course, he would identify the first deed of trust note signed by Johnson to secure Perpetual on the first trust; that he would testify that there were no prior encumbrances against this property here until the time of his settlement, and with the first deed of trust running to the Perpetual Building Association; that he saw Johnson sign these first deeds of trust at the time of the settlement; that he will identify the settlement sheet in connection with the settlement on these properties in connection with the first deed of trust; that he will identify the title company check as being given to Johnson; that he could identify the letter of authority from Johnson to the City Mortgage Company; and also that he will testify that in connection with the second trust, the notes for which are now held by the different holders, that is, the defendant Glorius and the defendant Sherman, and that it was entirely a straw transaction.

MR. FRIEDLANDER: So far as the first part is concerned --

MR. HEFFELFINGER: Well, will you gentlemen stipulate up to the question of the second trust?

MR. O'DONOGHUE: I will, your honor.

THE COURT: Well, that stipulation, I will let into the record, as to the first trust.

* * * * *

102

FRANK J. MARCELLINO was called and sworn as a witness and then testified as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Will you please state your full name, Mr. Marcellino? A. Frank J. Marcellino.

Q. Directing your attention to the month of October 1954, where were you employed, sir? A. District Title and Insurance Company.

Q. In what capacity? A. Settlement clerk.

Q. Now, did there come a time, Mr. Marcellino, when you had occasion to handle a transaction involving the premises at 1211 and 1213 L Street Northwest, which concerned the placing of second trusts on this property by the defendant in this case, Mr. Robert Johnson? A. Yes, sir.

Q. I might say to you, Mr. Marcellino, that counsel have stipulated as to the handling of the first trust transaction in connection with these properties, and I am now only interested in the second trust transactions --

* * * * *

103 Q. Mr. Marcellino, I show you Plaintiff's Exhibits No. 21 and 20, marked for identification, and Plaintiff's Exhibits 23 and 24, marked for identification at this stage of the trial, and I will ask you, sir, if you can tell me what those respective documents represent?

MR. FRIEDLANDER: We have no objection to the introduction of the documents. The only thing I could not stipulate with counsel is the general statement of description, but as far as the documents are concerned, they are the same now as at pretrial, and we have no objection.

THE COURT: Let them be received in evidence, and if there is any explanation to be made to the court about it, you may make that.

104 BY MR. HEFFELFINGER:

Q. Mr. Marcellino, can you tell us exactly how the transaction involving the two second trusts on premises 1211 and 1213 L Street Northwest took place, sir? A. I was approached by someone in Mr. Johnson's office, which stipulated that he had two second trust notes to sell, the notes that you have in your hand there, and wanted to know if I could find a buyer for them, and I, being a real estate broker myself, contacted a second trust party that I know very well.

Q. Who was that? A. Mr. L. V. Glorius.

Q. And he is a defendant in this case? A. I believe so, yes.

Q. Do I understand you to say, Mr. Marcellino, that those notes were already prepared when you saw them, or did you or someone on the

District Title Company prepare them, sir? A. I don't recall where they were prepared. I believe they were prepared in Mr. Johnson's office. It was not the title company's function at all.

Q. Now, these notes were payable to the order of Mary E. Dunnigan, were they not? A. I believe so.

105 Q. Did Mr. Johnson bring them to you, or did Mary E. Dunnigan bring them to you? A. That's something I can't recall. I thought it over in my mind but I can't recall which one it was. I had several transactions with them when they were working at City Mortgage, and it was such a long time ago, and at the time I had four or five cases a day, so it is very hard to recall the mechanics of it.

Q. These notes each provide for the sum of \$1,650, do they? A. Yes, sir.

Q. Do you recall what Mr. Glorius paid for those notes? A. I believe he paid \$2,600.

* * * * *

106 THE WITNESS: As I recall, it was \$2,600.

MR. HEFFELFINGER: May we stipulate, Mr. Friedlander, that Mr. Glorius paid a total of \$2,500?

MR. FRIEDLANDER: I have no objection to the introduction of the cancelled checks in evidence, so we don't have to stipulate as to that.

THE COURT: Put them in.

* * * * *

108 F. RUST BISHOP was called and sworn as a witness and then testified as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. * * * A. F. Rust Bishop.

Q. And with whom are you associated? A. I am assistant treasurer of First Federal Savings and Loan Association of Washington.

Q. Are you here this morning in answer to a subpoena to appear and produce the original of a deed of trust note? A. I am.

Q. And do you have the original of that note with you, sir? A. I do.

MR. HEFFELFINGER: In order to facilitate the trial, your honor, may we have a stipulation of counsel that Plaintiff's Exhibit No. 5, which is the photostat copy of this note, is admitted, and that the payments, five payments, appear on the original of this note, the first payment dated November 15, 1954, the second on December 13, 1954, the third payment January 27, 1955, and the fourth payment dated January 15, 1955 -- they were the payments made on the note after it was left with the First Federal by Miss Osin?

109 MR. FRIEDLANDER: We have no objection.

MR. O'DONOGHUE: Nor do we.

THE COURT: It may be received in evidence

MR. HEFFELFINGER: And also that the collection agreement, Exhibit No. 6, which is a photostat copy, is an exact copy of the original which Mr. Bishop has here before him? May we so stipulate?

MR. O'DONOGHUE: We so stipulate.

THE COURT: Very well. It may be received in evidence.

* * * * *

CROSS EXAMINATION

BY MR. O'DONOGHUE:

Q. Mr. Bishop, when this money was collected, the payments were made, do you know what was done with the proceeds? A. They were credited to the savings account of Miss Osin.

110 Q. Was she notified in any way when the payments were made?

A. Oh, yes. There is a notification that goes out, which is a copy of the slip that goes to the bookkeeping department for entry on her account, and it is made up in duplicate -- well, actually it is made in triplicate -- the person making the payment gets one, Miss Osin received a copy, and the bookkeeping department received the other copy for entry onto the savings account.

Q. And that was each time when a payment was made? A. That's correct.

MR. O'DONOGHUE: I have no further questions.

REDIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Mr. Bishop, I notice the last payment was made here on February 15th? A. That's correct.

Q. Now, was any notification given to Miss Osin on March 15th when the payment was not made? A. No.

* * * * *

111 PAUL E. RUGERS was called and sworn as a witness and then testified as follows:

DIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. * * * A. Paul E. Rutgers.

Q. What is your occupation, sir? A. Investigator, district government, department of occupations and professions.

Q. And how long have you been so employed?

BY THE COURT:

Q. State that occupation again? A. Investigator, district government, department of occupations and professions, your honor.

Q. And what does that mean -- I mean, from the District of Columbia -- investigator of occupations? A. And professions -- for the district government, sir.

Q. What does it mean? What do you do? A. Investigate professional and occupational people who have licenses in the district and anything relating to them.

112 Q. Do you investigate lawyers? A. No, sir.

THE COURT: All right.

BY MR. HEFFELFINGER:

Q. Now, Mr. Rutgers, how long have you been so employed in that capacity? A. Eleven years.

Q. Now, directing your attention to the months of March and April of 1955 . . . in line with your duties, sir, were you investigating a Mr. Robert H. Johnson, a defendant in this case? A. I was.

Q. And what sort of investigation were you conducting, sir? A. At least two -- two separate cases.

Q. And was one of those cases the case involving the property at 1211 and 1213 L Street Northwest? A. Yes, sir.

Q. Now, let me ask you this: Had you at that time made any examination of your records to find out if Mr. Robert Johnson, a defendant in this case, was a licensed real estate broker? A. Yes, sir.

Q. And did he have such a license? A. No, sir.

113 Q. Had he ever had such a license? A. No, sir, not in the District of Columbia.

Q. May I ask you . . . did he ever apply for a license in the District of Columbia? A. No, sir.

Q. Now, do you have with you this morning, Mr. Rugers, the official file of your office in connection with your investigation of Mr. Johnson in connection with the premises 1211 and 1213 L Street Northwest? A. I have portions of it. Some of it was turned in as evidence in another case.

Q. When you say some of it has been turned in as evidence in other cases, are you referring to, as one case, United States versus Robert H. Johnson, criminal No. 629-55? A. October 29th of last year?

Q. Yes. A. Yes, sir.

Q. Now, I ask you, sir, do you have in your file either the original or a photostat copy of any letter sent to Miss Osin in Florida? A. By whom?

Q. By your department or someone in your department, sir? A. We have a copy of that letter, sir.

114 Q. May I see what letter you are referring to? A. This one right here.

Q. And what is the date of that letter? A. March 29, 1955.

Q. And to whom is it addressed? A. Miss Mary Osin.

Q. At what address? A. Care of the Cadet Hotel, 17th Street and James Avenue, Miami Beach, Florida.

Q. And by whom was it sent? A. William R. Bannie (?), chief, division of investigations.

Q. Those are the records that you have there that are kept in the regular course of your operations and business, sir? A. That's correct.

MR. HEFFELFINGER: May this, please, be marked Plaintiff's Exhibit 27? Do you gentlemen have any objection to its being offered and admitted into evidence?

MR. O'DONOGHUE: I object to it because I don't think it is relevant.

THE COURT: I will have to see it. Hand it up here.

115 MR. HEFFELFINGER: Would your honor like to hear me on it?

THE COURT: Very briefly. Most of the matters in this letter have already been received in evidence.

MR. HEFFELFINGER: Your honor, I merely wish to say . . . that this plaintiff was down in Florida and received that letter, as a result of which she then wrote Plaintiff's Exhibits 7 and 8.

THE COURT: Very well. I will admit it for that purpose. What is the date of that -- March what?

MR. HEFFELFINGER: March 29, 1955.

THE COURT: All right.

BY MR. HEFFELFINGER:

Q. Now, Mr. Rugers, did there come a time, after that letter was written, that you, in the course of your investigation, obtained the originals of Plaintiff's Exhibits 7 and 8, sir? A. Yes, sir.

Q. And were those photostats made by you, sir? A. Yes, sir, made by me personally.

Q. Now, did there come a time when you were in my office shortly after obtaining these letters of March 30th from Hohenstein Brothers?

A. That is correct.

Q. And how soon after, sir? A. I believe it was the same day.

116 Q. And what transpired in my office, sir? A. In respect to what, sir?

Q. Did I make a long distance telephone call to Miss Osin? A. You did, sir.

* * * * *

BY MR. HEFFELFINGER:

Q. Mr. Rugers, as a result of being in my office and my call to

Miss Osin, how soon --

THE COURT: Pardon me. Are you intending to offer this for some specific purpose?

MR. HEFFELFINGER: Your honor, one purpose I have in mind is to show that after this woman was first advised by this letter of March 29th, and her following letters of March 30th, that I then got in the picture on a call from Hohenstein Brothers. I knew nothing about the case until Mr. Rutgers told me and I had obtained the address of this woman. I

117 called her on long distance phone and made an appointment, a few days later, to have her in my office with Mr. Rutgers.

THE COURT: Under what theory is that admissible?

MR. HEFFELFINGER: I see. Unless these gentlemen will stipulate, I want to show the element of time of her first knowledge of anything wrong, that suit was filed shortly thereafter, so that there will not be any possible claim that she did not proceed with due diligence in exercising her rights from a legal standpoint. I think the record will show that this case was filed --

THE COURT: You can show that from the file marks. But my own view about the evidentiary problem, I think you will be permitted to testify yourself from whom you received notice of it and became counsel, and if counsel promptly filed the lawsuit, the file marks will show when you did. I don't think it is permissible if you propose to prove by this witness some conversation which you had with your client out of the presence or hearing of these people.

MR. HEFFELFINGER: I wasn't attempting to do that.

THE COURT: Then go ahead and I will see what you are attempting to do.

118 MR. HEFFELFINGER: May I ask if counsel will stipulate that the suit was diligently filed after the first knowledge?

MR. FRIEDLANDER: I would stipulate that the suit was filed when you got a copy of the foreclosure notice.

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BY MR. HEFFELFINGER:

Q. Now, Mr. Rugers, did there come a time in connection with your investigation in this particular case involving the defendant, Mr. Johnson, that you were being present or that you were present when he was being questioned by other people? A. Yes, sir.

Q. And approximately when was that, sir? A. The morning after he was arrested.

Q. And when was he arrested? A. To my best of understanding at this point, it would be early in April 1955.

119 Q. Who was present at that time? A. Lieutenant Wiggins and Sergeant Barclay and myself and at times Miss Osin.

Q. That's Lieutenant Wiggins and Sergeant Barclay of the metropolitan police department? A. Yes.

Q. And were you present during the entire questioning of Mr. Johnson on this particular occasion? A. Not the entire time, no.

Q. Well, during the time that you were there, was any coercion or duress employed? A. Absolutely none.

Q. Now, did you at any time hear the defendant Johnson make any response as to questions to him in connection with this transaction between him and Miss Mary Osin?

MR. O'DONOGHUE: Your honor, I object to that question for this reason: It is hearsay as far as any of the defendants now in the case are concerned. We are not bound by any statements made by Johnson. There has been a default against him and, for all practical purposes, he is out of the case, though these other defendants are in here, so that the ordinary rule about a conversation with a party is certainly not applicable here. For the purposes of this case, Johnson is not a party, and we are not bound by anything he said. We are the only ones now interested, and therefore it is hearsay as to us and should be excluded.

THE COURT: I will hear you about that.

MR. HEFFELFINGER: Your honor, the defendant Johnson is still a party in this case, even though there has been a default entered, as such, and there has never been any formal judgment entered against the defendant Johnson. He is here through his counsel, Mr. Sherry, and I

submit that any statement this man made is binding on him as a defendant in this case, and can also be used for whatever purpose it may serve.

THE COURT: The clerk has entered a default, but no judgment has been entered?

MR. HEFFELFINGER: No.

THE COURT: I am inclined to believe that it would be admissible as against the defendant Johnson, but I don't believe that it would be admissible generally as against all of the defendants, some of whom haven't any privity with Johnson, maybe they have been, but I will allow it as a statement of Johnson that may be used against him. I am not going to admit it for all purposes.

MR. HEFFELFINGER: All right, your honor.

BY MR. HEFFELFINGER:

121 Q. Now, what particular response did you hear him make to any questions propounded to him in connection with the transaction between him and Mary Osin, Mr. Rugers? A. Many responses, sir.

Q. Well, now, in regards to this particular case concerning Miss Osin, as to the manner in which he obtained the property, what response, if any, did he make? A. He said he stole it.

Q. He said he stole the property? A. That's correct.

Q. Now, did he at that time implicate any others in this transaction with him? A. No, sir, he did not.

Q. Did he at any time ever state that others were involved? A. Yes, sir.

Q. Did he ever mention who those others were? A. Yes, sir, to an extent.

Q. And who were the ones that he named? A. He named all of his associates at City Mortgage Company at that time.

Q. And will you name all of his associates at City Mortgage at that time? A. Well, at the time of the transaction, he had working there, at the time he was arrested --

122 Q. Was there a LaViscount? A. She did work for him, but whether she actually worked for him at the time he was arrested or not, I am not

clear on that.

Q. Was there a Mr. Newton? A. Mr. Newton had previously worked for him.

Q. Was there a Miss Melvin? A. She also previously had worked for him.

Q. Now . . . to your knowledge, Mr. Rutgers, were LaViscount, Newton and Melvin employed by City Mortgage Company on October 13, 1954?

MR. FRIEDLANDER: May we object now? I understood your honor had allowed him to ask what Johnson had said. We don't know the people that he is now mentioning, but I don't think we ought to undertake to prove or disprove the truth of whether or not they were involved. I thought perhaps he had some other purpose.

THE COURT: I don't think the involvement of others is any issue in this case, but I will let you prove it, for whatever you think it is worth, but I am not concerned with other people.

MR. HEFFELFINGER: It may develop that you will be interested in them.

123 THE COURT: Very well.

BY MR. HEFFELFINGER:

Q. These three names that I have mentioned, Mr. Rutgers, were they so employed on October 13, 1954? A. They were.

Q. By City Mortgage Company? A. Yes, sir.

Q. They were? A. Yes, sir.

MR. HEFFELFINGER: You may inquire.

CROSS EXAMINATION

BY MR. FRIEDLANDER:

Q. Your office wrote a letter to the plaintiff, Miss Osin. I wondered if she responded to it? A. Yes, sir, she did.

Q. Do you have her letter? A. No, sir, I do not.

Q. Was such a letter received by your office? A. Yes, sir.

Q. Where is that letter? A. I wish I could answer that question, but there were many people that had their hands on our file in there, but

that letter may be in the hands of the United States attorney -- I don't know.

124 Q. Well, not being able to learn where the original of the letter is, can you from your memory state to the court whether in that letter Miss Osin states she had sold the property? A. Yes, sir, she not only told me that in the letter, but also that on the telephone in Mr. Heffelfinger's office when he called her in my presence.

Q. And the big complaint against Mr. Johnson was that he had wrongfully failed to pay on the trust or mortgage to secure the note he had given her, is that correct? A. She didn't say that.

Q. She didn't? A. No.

Q. Well, I noticed that in the criminal case transcript, that the United States attorney said that in his opening statement. Were you present at that time? A. I was excluded. I was a witness in that case.

Q. You were? A. Yes.

Q. But, in your preparation of this case, I assume you worked with the district attorney's office? A. Yes, sir.

Q. And do you not know that that was the claim of fraud that they made against Johnson? A. That was the contention of the investigators in the district attorney's office?

125 Q. Yes, that he had wrongfully failed to put the mortgage on record to secure the note he had given her? A. That's correct.

Q. All right. You are familiar with real estate terminology from your connections and work in your office, are you not? A. To a degree, sir, I am.

Q. Sir? A. To a degree.

Q. Well, I think I can say that your knowledge is fairly comprehensive, sir. Would you say that the expression "stealing property," as used by real estate men, means buying it cheap or without cash? A. As a general rule, yes, but the implications so far as this case was concerned, it meant that he stole it by illegal means. That's exactly what that man had in his mind.

Q. Why do you say that? A. Well, it was apparent to us that's

exactly what he meant as distinguished from the term that you used.

126 Q. I was wondering -- A. Yes, sir.

Q. But usually "stealing property" doesn't mean physically picked it up but getting it cheap or without cash? A. That's correct.

MR. FRIEDLANDER: All right.

BY MR. O'DONOGHUE:

Q. Did Miss Osin state to you, Mr. Rugers, that she had received back a deed of trust on this property? A. She states she had received a deed of trust note from Mr. Johnson.

Q. Did she say anything about a deed of trust? A. She claimed that she didn't know anything about a deed of trust.

Q. Did you supply the information to the district attorney on which the indictment was based? A. Yes, sir.

Q. And did you see that indictment? A. Yes, sir.

Q. You testified before the grand jury, did you? A. Yes, sir.

Q. Do you know whether that indictment stated that Johnson procured the deed by promising to give and record a deed of trust on the property? A. I don't recall exactly what was in the indictment.

127 Q. Is that your understanding of it? A. Would you rephrase that, sir?

Q. That the representation was made by Johnson to Miss Osin that he would give and would record a deed of trust on the property, and by making that promise he procured the deed, but he failed to execute that promise? A. That's correct, in substance, yes, sir.

Q. And that was your understanding of what, in fact, Johnson had done in the transaction? A. He hadn't fulfilled his promise, as you stated it, yes, sir.

* * * * *

REDIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Mr. Rugers, did you at any time ask Johnson what his occupation was? A. Yes, sir.

Q. And what did he tell you?

128 MR. FRIEDLANDER: This is a question, of course, that is objected to, as far as the other defendants are concerned.

THE COURT: The same ruling.

BY MR. HEFFELFINGER:

Q. What did he tell you his occupation was? A. As nearly as practicable, his exact words, "I guess you would call me a thief."

Q. Now, Mr. Rutgers, you met Miss Osin, face to face and personally, for the first time in my office, did you not? A. That's correct.

Q. And you hadn't known her personally before then? A. No, sir.

Q. Were you in my office at the time Miss Osin first arrived in my office? A. Yes, sir.

Q. And at that time, Mr. Rutgers, did you not show me either the original or a photostat copy of this deed from her to Johnson? A. I believe that is correct.

MR. O'DONOGHUE: I object to this and move to strike the answer.

THE COURT: For what reason?

129 MR. O'DONOGHUE: I don't know what questions are going to be be elicited from this witness and --

THE COURT: It may be relevant, that particular question, and we will have to see about counsel's development of it. Overruled.

MR. O'DONOGHUE: It is simply hearsay unless it is an admission against interest.

THE COURT: Well, if he is merely describing the act which she did, he is not stating any conversation with this lady. I don't think a conversation between this man and Miss Osin would be admissible.

MR. O'DONOGHUE: That's all I am objecting to.

THE COURT: We haven't gotten down to the conversation, counsel is approaching it, but you make your objection when he does, and I will rule on it.

* * * * *

BY MR. HEFFELFINGER:

Q. Mr. Rutgers, when you first conducted this investigation of Mr. Johnson, were you or were you not trying to make out a case of forgery

instead of false pretenses? A. Not that I recall.

* * * * *

130 BY MR. HEFFELFINGER:

Q. Was a warrant originally taken out against Mr. Johnson charging him with feloniously taking a car away, property of the value of \$30,000 of Mary Osin, by trick or artifice? A. That's correct.

Q. And is that the charge on which he was subsequently tried and convicted?

MR. FRIEDLANDER: The record, if your honor please, shows what he was tried for . . .

THE COURT: Well, it would be the best evidence if it were available here.

MR. HEFFELFINGER: Then, your honor, I offer in evidence the record in United States versus Robert H. Johnson, criminal case No. 629-55.

THE COURT: Do you want to offer the whole record?

131 MR. HEFFELFINGER: Wait just a moment.

MR. FRIEDLANDER: The court will take judicial knowledge of any record of this court without it being admitted.

THE COURT: That's right.

MR. FRIEDLANDER: And that part we actually agreed on, but I think counsel can read any part of it without any objection on the part of any of the defendants.

THE COURT: Don't read it all unless it is absolutely necessary.

MR. SHERRY: At the time, false pretenses, not by artifice and by trick, that's the statute he was indicted under.

THE COURT: Do you accept that statement?

MR. HEFFELFINGER: Yes, your honor, with this clarification, that this gentleman or these gentlemen will admit that he was originally, also, charged with grand larceny by trick.

MR. FRIEDLANDER: Now, how is he so charged? In what paper?

MR. HEFFELFINGER: I am referring to a paper filed April 19, 1955, in the commissioner's docket, case No. 9691, captioned United

States of America versus Robert Henry Johnson.

132 MR. FRIEDLANDER: What case is that? The case we are talking about is criminal No. 629-55.

MR. HEFFELFINGER: I said this is the commissioner's docket. Wherein the marshal was directed to pick up the said Johnson, wherein he was charged on October 13, 1954, in the District of Columbia with --

THE COURT: What date was that?

MR. HEFFELFINGER: On October 13, 1954.

MR. FRIEDLANDER: That's the date the offense was?

MR. HEFFELFINGER: Yes.

MR. FRIEDLANDER: That isn't the --

THE COURT: He wasn't charged on that date?

MR. HEFFELFINGER: No, sir.

THE COURT: That's the date of the offense.

MR. FRIEDLANDER: Is that an application for a warrant that you are reading from, counsel?

MR. HEFFELFINGER: Your honor, this paper is designated final commitment, where he is charged with grand larceny by trick, and held for the grand jury, in violation of Title 22, section 2201, of the code.

MR. FRIEDLANDER: Your honor, we will stipulate with counsel that it went before the grand jury and they came out with an indictment, we have a copy here of the original, and there charged with false pretenses, Title 20, section 1301.

133 THE COURT: Is it material here -- what he was charged with and tried upon?

MR. HEFFELFINGER: Your honor, my purpose in this is to show that in connection with the facts obtained by investigation, that this man was originally charged with, or in addition to false pretenses, was charged with grand larceny by trick, and that they could not, in effect, make that charge stick and had to, of course, end up with false pretenses.

MR. O'DONOGHUE: I will stipulate to that. That is exactly what happened.

MR. HEFFELFINGER: And because of the fact they could not prove

forgery.

MR. O'DONOGHUE: There was no question about forgery.

THE COURT: Well, if counsel has so stipulated, then your troubles are over in that regard.

MR. HEFFELFINGER: And will counsel stipulate, in accordance with the pretrial statement, that Johnson was convicted, I think, on --

MR. FRIEDLANDER: That record shows it -- the part your honor takes judicial notice of -- he was convicted.

THE COURT: When?

MR. HEFFELFINGER: On November 7, 1955.

134 THE COURT: They don't have to stipulate that. You just tell me the date.

MR. HEFFELFINGER: He was convicted on November 7, 1955, your honor.

THE COURT: And is he incarcerated?

MR. HEFFELFINGER: Yes, sir, under sentence.

* * * * *

REDIRECT EXAMINATION

BY MR. HEFFELFINGER:

Q. Mr. Rutgers, first of all, I haven't been able to obtain the original of this deed from Osin to Johnson. You don't have it? A. Not the original of the deed, no.

Q. Do you know what happened to that or who ended up with it? A. It was recorded locally, but where the actual deed is, I don't know.

135 Q. And from the time you began making your investigation, you only had a photostat copy of the deed, did you? A. Yes.

Q. From the recorder of deeds' office, is that correct? A. A certified copy.

Q. Mr. Rutgers, did you at any time, in connection with your investigation of Mr. Johnson in this particular case, discuss with any official of the metropolitan police department whether the signature on that deed was a forgery? A. It was discussed, yes, sir.

Q. And were you told at that time -- strike that. Did you discuss

it with Mr. Gullickson? A. Yes, I did.

Q. And he is attached to the metropolitan police department, is he not? A. He is examiner of questioned documents for the metropolitan police department.

Q. And has been for some thirty years? A. For some time, yes.

* * * * *

136 MR. HEFFELFINGER: Now, your honor, I have another witness, Lieutenant Higgins (Wiggins), who will testify or just corroborate the statements made by Mr. Rugers that he was present when Johnson made the statement that he stole the property, and that others were involved in it with him -- if you will stipulate to that?

MR. FRIEDLANDER: We object to that, your honor. Your honor has ruled that that applied only to Johnson.

THE COURT: Yes, and I will adhere to that ruling, but will you stipulate that the present witness will say the same thing, subject to my same ruling?

MR. FRIEDLANDER: Yes, sir.

MR. HEFFELFINGER: Then let the record show that we so stipulate.

MR. FRIEDLANDER: If he were called as a witness, he would so testify, and we make the same objection to it.

THE COURT: And the same ruling.

137 MR. HEFFELFINGER: And also Sergeant Buckley (Barclay)?

MR. FRIEDLANDER: All right, we will stipulate the same.

THE COURT: Very well. I will make the same ruling with respect to him.

* * * * *

138 MR. O'DONOGHUE: May it please the court, the defendants plan to put on no testimony. They would like to move to dismiss at this time or at the close of the plaintiff's case.

Now, whether your honor wants to hear arguments on the motion, or whether you would prefer to hear it after both sides have rested, I don't know.

THE COURT: My preference would be to hear it after both sides

have rested.

MR. O'DONOGHUE: Very well.

THE COURT: Of course, the defendants may make their announcement as to what they want to do, and we will consider the matter of argument.

MR. O'DONOGHUE: Very well. We rest.

MR. FRIEDLANDER: And we will rest.

* * * * *

THE COURT: I have overruled the motion to dismiss . . . Let the record reflect that you rested and we will hear final arguments on the merits of the case.

* * * * *

139 MR. BRONZ: . . . as to that matter, counsel for the intervenors have come to an agreement, and we would like to stipulate on the record that, as between ourselves, that regardless of our claims with respect to other parties, that as between ourselves that my client, the intervenor Umbricht, shall have a priority to the extent of \$800, that the intervenor Hakim shall then have the next priority to the extent of all of his claim, and that I shall have a third priority for the rest of my claims. In other words, my claim is \$1,600, his is \$4,800, and we have agreed that my half should come first and last and his part in between, and we are quite
140 content to have that issue resolved in that fashion.

* * * * *

THE COURT: Gentlemen, in the case of Osin against Johnson, the court has given the matter grave consideration and has arrived at a decision with considerable reluctance, because it is my considered opinion that the defendant-intervenors should prevail in this case, and judgment will be so entered.

141 I desire the form of the decree to be in such manner that this lady, who has been victimized, may have all the possible relief that she can. I think Mr. Bronz suggested a form of decree to give her some opportunity to retain this property. I don't know the status of this case with respect to the foreclosure proceedings.

But I will sign a decree and that decree should be couched in language to give her every possible protection I can, and I hope you lawyers will bear that in mind. I won't sign any decree otherwise.

I will say this again to counsel: That my sympathies certainly go out to this lady, and last night I tried to figure every possible way I could to allow her to prevail, but I just cannot do it.

And so I ask you to prepare findings of fact and conclusions of law in accordance with this decision and a decree and present it to me within seven days.

* * * * *

144 THE COURT: Now, what is this hearing supposed to be on -- what phase of this case?

MR. McCARTHY: On my motion, sir.

THE COURT: And what is your motion?

MR. McCARTHY: Judgment in favor of Osin.

THE COURT: Yes, I suspected that.

MR. McCARTHY: And the findings of fact and conclusions of law as a part of it.

THE COURT: Yes.

MR. McCARTHY: The other day your honor said you wanted it most favorable to Osin and I assumed from that --

THE COURT: No, I didn't say findings of fact. I said I wanted the judgment to protect this woman in every way I possibly could.

MR. McCARTHY: That's what I was trying to say.

THE COURT: All right.

MR. McCARTHY: So from that I assumed the deed from Osin to Johnson was to be set aside under our default judgment against Johnson.

THE COURT: Yes.

MR. McCARTHY: Well, if that is so, then the question remains as to the liens of Perpetual, and when I say Perpetual that means everybody that claims under Johnson, and then the intervenors as such.

145 In this testimony, Perpetual has three defenses, as I see it: One is that they take for value without notice, and the second one is, as between

two innocent parties, the party who makes the fraud possible has to suffer, and the third is that they may not attack the notary's certificate.

Well, there is no such thing as taking without notice where the signature on the contract is obtained by fraud. As we have here, Osin testified that she thought she was signing a sales agreement whereas, in reality, it was a deed.

Now, if, as they contend, she knowingly executed a deed to Johnson, that would be another matter, but there is no case on record that I can find where a party like Johnson who obtains a signature to a document through misrepresentation --

THE COURT: Let me ask you this question?

MR. McCARTHY: Yes, sir.

THE COURT: Suppose, under all of the evidence, it is my finding, and it is my firm opinion, that she knew she was signing a deed? I think, in the comments I made from the bench, I think of it as a case of misplaced confidence.

MR. McCARTHY: On that point, you will recall now, sir, that in September Johnson, using his title of City Mortgage Company, presented
146 her with the two sales contracts, one for each house, and when she came into his office he handed her a new one, sales contract, where he took title in his name, which was in conformity with the agreement which they had reached -- in other words, evidence that she had submitted to her this contract on behalf of the City Mortgage Company -- then Johnson, she testified, told her he wanted to buy it himself, and she testified at that time that she read the upper part of that contract, and she handed it back to him, there was this manipulation of papers, and that then Johnson came over and laid this down --

THE COURT: Do I have to believe that? That is the weakness of your position. I don't believe that happened. I think this lady believed Johnson, she wanted to make a good deal, and she signed the deed and thought he was going to place that trust on record. That's what I believe the facts are and I am going to find that.

MR. McCARTHY: The only thing is, your honor, under our decisions

here -- and, incidentally, I gave you the wrong citation; I think it should have been 78-5, in that Stone case -- this evidence was very positive on that point.

THE COURT: Her evidence?

147 MR. McCARTHY: Yes, sir.

THE COURT: Well, there was a variance, I thought, in many respects. She testified one way at the criminal trial and another way at the trial of this case, and I have got to weigh her evidence.

MR. McCARTHY: Well, you have to weigh it from all the aspects of this case, it is inherently intolerable, but I think it is binding on your honor. I am not going to argue about the facts of it, but I still say she has told you a very probable story. You have to take into consideration that, when Johnson was arrested, as the police officers testified, he said "I stole the property from her" and "I stole it."

MR. FRIEDLANDER: That statement, your honor, is admissible only as to Johnson.

MR. McCARTHY: Oh, no, it is admissible for all parties.

THE COURT: I believe I ruled that it was admissible only as to Johnson. I may have erred. Even if I think he stole the property from her, he stole it by representing to her "You give me a deed, and I will take it and file this deed of trust, giving you protection," which she accepted, but he got the deed from her and didn't do it. Then he went and sold it to an innocent purchaser.

148 MR. McCARTHY: There is no testimony to that effect in the record, I don't think, your honor. I think it will show that at the time she starts to testify as to Johnson, to the end of March, when she is advised, there was never one word said between them about executing a deed, and the only thing that was ever said about that was when Johnson asked her to bring in her original deed. That's the only time anything was said about a deed.

You will recall she didn't think it was a settlement, and it is very important, although she had had all these six or seven other transactions, she told you her interests were always protected by a licensed real estate

broker or a lawyer or both, and secondly they were always at the title company, and she didn't think that this meeting was a settlement because there was no settlement.

As I recall it, your honor asked her what that was, and she explained to you what it was, one way or another, and that's the time the deeds were executed.

THE COURT: Didn't she later write a letter from Florida saying she had sold this property?

MR. McCARTHY: Yes, she wrote a letter, and she told them "I made a sale," there is no two ways about that, she said, "I have made a sale," but she explains that she had signed a contract, and that's all she thought she had signed.

149 Now, as to those rents, she told you that when Johnson took over some time in September he had collected the rents right on, and kept on as she expected him to, and that's one of the things she expected to have settled at the time of the settlement.

You know, here, your honor, under our law, all real estate brokers have to have a license, they have to have one, and they can't get it without quite an examination as to their knowledge, and then they have to prove that they have no criminal record. So that, when you go to a real estate broker, you can supposedly rely on it.

Now, here is this woman that has always dealt with those, she has always had a settlement at the title company, she had inquired where the settlement was going to be, she told you that she was told it would be at the District Title Company. She said she didn't think this was a settlement.

But, if your honor please, there is no testimony at all, either on cross or redirect, in this case or the other one, where she went in there to sign a deed. Throughout the whole proceedings she has always taken the position that she signed a sales contract, and a sales contract only,

150 and that's all she intended to sign. Now, as to the notary public --

THE COURT: The trouble or the difficulty in your position is, I don't believe it, I don't believe her testimony, I would like to believe it,

but I don't believe that's all she intended to sign. I believe, under all the evidence and the facts and circumstances of this case, she signed a deed, she knew she was signing a deed.

Now, if I am erroneous, you are going to set it aside, and I sort of halfway hope you do -- it wouldn't displease me at all if you reverse this case, I will tell you that -- but I just don't believe it was that way, and I certainly would be dishonest if I didn't tell you that.

MR. McCARTHY: I appreciate that, your honor. I know that you are sympathetic.

THE COURT: My sympathies are a hundred percent with this woman, and this is one case that I wouldn't regret at all having it reversed, and it would, I think, please me if you can do it.

MR. McCARTHY: Of course, your honor, there is another thought: You know we have always contended that Johnson's conviction of having obtained this deed from her by fraud and his conviction voided this instrument for any and all purposes.

151 THE COURT: Well, what kind of fraud -- fraud in the inducement or fraud in the execution? Does the criminal record show anything about that?

MR. FRIEDLANDER: The indictment says failing to put the mortgage on record. That was clear. That's what they convicted him on. They couldn't convict him of anything else.

MR. McCARTHY: I have never seen the indictment.

THE COURT: Just what does it say?

MR. BRONZ: Your honor, I don't have my criminal file here. However, the indictment was a very lengthy document. Under the statute, the way the indictment could have been prepared, it could have been misrepresentation, it could have been the things he told her, and it could have been for any one of a number of things.

MR. O'DONOGHUE: I have it somewhere, I am sure.

MR. McCARTHY: May I ask counsel, at the trial how was that part of the indictment -- inducing her to sign her name to one document, the sales contract, whereas in reality it was a deed?

MR. BRONZ: Not to my knowledge, to my recollection that point didn't come in, except on part of the direct examination.

152 MR. McCARTHY: I don't suppose, your honor, there is any use in giving you any argument as to setting it aside?

THE COURT: I haven't yet signed the findings of fact and conclusions of law, but Mr. O'Donoghue has submitted amended findings. I assume he has furnished you a copy?

MR. McCARTHY: Yes.

THE COURT: Which incorporates the suggestions of Mr. Bronz and which I think are well taken.

MR. McCARTHY: Before you pass on that, I would like to be heard?

THE COURT: All right.

MR. McCARTHY: Nothing that Miss Osin did caused either of these intervenors to lose anything. There is no privity between them. They have only this in common: Johnson stole the real estate from Osin, and from both of the intervenors he stole personal property -- automobiles.

Now, they differ in this, in that Miss Osin in seeking her relief here. They have recorded their judgments on the property because it was in Johnson's name.

153 Now, if your honor, as you have indicated, is going to declare the Osin-Johnson deed a nullity, then that strikes that deed from the record, and therefore the intervenors' judgments have nothing to attach to.

Now, they are not in the same position as Perpetual, not at all, so if you allow Perpetual's line to remain, it is only a lien, suspended in the air, free from any chain of title, and to allow these intervenors to move in behind them, then you are putting them at an advantage over Miss Osin, for this reason:

The only reason that you are allowing Perpetual to stand is because you believe she did some act, and as a result of the act they are entitled to maintain their line, but they cannot stand or should not stand as an equitable proposition, the court, in effect, saying, as between two thieves, I mean the victims, the corpus of one of the thefts, we are going to allow the intervenors to step up ahead of the owner of the real estate. I will say

to your honor that would certainly be unfair.

THE COURT: What do you have to say about that? You represent the intervenors.

MR. BRONZ: I represent one of them.

THE COURT: Well, your position is identical practically.

154 MR. BRONZ: Your honor, the situation of the automobiles was almost identical with the real estate. Johnson induced my client to endorse the certificate of title to an automobile, and in return for that he gave him a promissory note.

I could have followed the automobile, but I recognized it was perfectly clear, if he signed the certificate of title, and it went to an innocent purchaser for value without notice, that I had no claim against the innocent purchaser, and I made no attempt to follow it in that direction.

I simply secured a judgment, recorded it, and then the real estate was in the name of Johnson, and therefore under the district laws, the statutes, a judgment under the district law is just as good as a recorded mortgage.

Now, all of us represent people who were cheated by Johnson, and I mean no disrespect to the plaintiff, but it seems to me fairly clear, but as a matter of law we are in as good position under the cases cited as mortgage holders.

As a matter of evidence, your honor has found that the plaintiff has not made out a case, a case has been made out for rescission and the reconveyancing of the property, but if Johnson reconveys now, it is subsequent to the intervening liens which have been established.

155 I may say, as a practical matter, your honor, that before this case came to trial, most of the defendants and intervenors were willing to make a settlement of this case with the plaintiff. I think most of us are still willing to do this, if Miss Osin wants to take the property back and make a reasonable settlement with the claimants.

I think the first trust holder may not be willing because of the priority.

THE COURT: You mean, then, the people you represent don't want

to make a settlement with this woman?

MR. O'DONOGHUE: I don't know, your honor.

THE COURT: I wish there was some way I could make you do it.

MR. O'DONOGHUE: If there were, I might be more reasonable.

THE COURT: Yes.

MR. FRIEDLANDER: Mr. O'Donoghue tells me, if she would buy back one of the notes at some discount that they had gotten, then she could foreclose it and get a judgment. I didn't suggest it to them, I didn't approve of it, but I was told by Mr. O'Donoghue that one of these people
156 had suggested it down here at Perpetual, but this lady is evidently a very stubborn person because she has already taken the position, in spite of the facts, that nobody was going to get anything on this property even though she caused the loss.

Now, Mr. McCarthy, I don't know what his position now may be, whether she is more amenable to settlement if he makes the suggestion. We don't want to foreclose the property, and we don't intend to unless she wants to, so we suggest, if he made it, the man at Perpetual, that it would be to her advantage to follow through.

THE COURT: When I leave here, I hope that everyone will try to settle. This woman is the victim of this man, and some or all of your clients ought to have a little of the milk of human kindness in their hearts and let her come out of this with something.

MR. FRIEDLANDER: All she has to do is make a reasonable offer. We will be glad to get out of it.

MR. MCCARTHY: Of course, I will tell you, your honor, that naturally I am going to try to do everything I can for settlement, but I don't think that answers our question insofar as these intervenors are concerned, because if this deed as between Osin and Johnson is void it

158 was void the day it was signed, and it should be stricken as a cloud on her title as of the date or at least the day it was recorded.

If that is done, then the intervenors' judgments are attached to nothing. It is just attached to that instrument.

THE COURT: If the deed is void, as between Osin and Johnson,

are the legal consequences as Mr. McCarthy indicates?

MR. BRONZ: I don't see it, your honor. This is a matter of record. Title was in Johnson, if your honor finds that a deed was executed, even though induced by fraud, but it was nevertheless executed and recorded, the district statutes ordinarily provide that purchasers and others can rely on record title, and specifically, under the district statutes, record judgment liens shall have the same standing as a recorded deed of trust mortgage on the property.

THE COURT: Well, I am going to adhere to my original position, Mr. McCarthy. As I say, I hope I am wrong in it.

MR. McCARTHY: You mean, your honor is going to --

THE COURT: I am going to sign the amended findings and judgment submitted by Mr. O'Donoghue. Now, where are the amended findings of fact?

159 (Discussion)

THE COURT: No, here it is.

MR. O'DONOGHUE: They are incorporated completely in this instrument. Suppose I take the original ones back so there won't be any possible confusion.

THE COURT: All right.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA ~~Circuit~~ Court of Appeals
For the

No. 13,432

District of Columbia Circuit

FILED NOV 6 1955

MARY OSIN, *Appellant,*

v.

ROBERT H. JOHNSON, ET AL., *Appellees.* *Joseph W. Stewart* CLERK

Appeal from the United States District Court for the
District of Columbia

BRIEF FOR APPELLEES.

PERPETUAL BUILDING ASSOCIATION,
SAMUEL SCRIVENER, JR., JUNIOR F. CROWELL,
L. A. SINCLITICO, THOMAS LAUGHLIN, LEO V. GLORIUS
AND BERNARD E. SHERMAN

DANIEL W. O'DONOGHUE ✓

ROSS O'DONOGHUE ✓

SAMUEL SCRIVENER, JR. ✓

DAVID S. SCRIVENER ✓

*Attorneys for Appellees,
Perpetual Building Association,
Samuel Scrivener, Jr.,
and Junior F. Crowell*

MARK P. FRIEDLANDER ✓

*Attorney for L. A. Sinclitico,
Thomas Laughlin, Leo V.
Glorius and Bernard E.
Sherman*

QUESTION PRESENTED

Whether this Court is not bound by the factual determination of the court below, as trier of the facts, that all the evidence proved that appellant knowingly signed a deed to her property because of the fraudulent promises of the grantee, under which circumstances she cannot reclaim her property from appellees who are subsequent innocent purchasers for value.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,432

MARY OSIN, *Appellant*,

v.

ROBERT H. JOHNSON, ET AL., *Appellees*.

Appeal from the United States District Court for the
District of Columbia

BRIEF FOR APPELLEES.

PERPETUAL BUILDING ASSOCIATION,
SAMUEL SCRIVENER, JR., JUNIOR F. CROWELL,
L. A. SINCLITICO, THOMAS LAUGHLIN, LEO V. GLORIUS
AND BERNARD E. SHERMAN

RESTATEMENT OF THE CASE

Appellant is a person of more than usual experience in the buying and selling of real estate. She and her brothers and sisters had inherited some property which they had settled among themselves by deeds (J.A. 49). She had

bought at least eight pieces of property at various times (J.A. 50) and had sold at least five properties at various other times (J.A. 49). She had in every instance attended the settlement of the purchase or sale (J.A. 51). Apparently none of these thirteen or more transactions were for cash so that she was quite familiar with the practice of giving promissory notes for the balance of the purchase price and was also familiar with the fact that such notes were secured by deeds of trust (J.A. 50-51). Indeed, "that's the only way she would sell property." (J.A. 74). Accordingly, she was able to recognize at a glance such documents as a release of a deed of trust (J.A. 36) or a sales contract (J.A. 38-39).

She had bought in 1946 two houses at 1211 and 1213 L Street, Northwest, and as usual gave a purchase money deed of trust and promissory note for the balance of the purchase price which she paid off in installments, finally receiving the release of the deed of trust on June 15, 1953 (J.A. 36-37).

She rented these properties by the room and by the week (J.A. 71), but had put them on the market for sale (J.A. 36). A neighbor recommended Robert H. Johnson to her as a licensed real estate broker for help in selling them (J.A. 38). Johnson indicated he would be interested in buying them himself and gave her signed contracts for the two properties which provided for a sales price of \$15,000 each, with no money down, but promissory notes for the full amount secured by first deeds of trust payable at \$85 a month each, principal and interest, interest at five percent (J.A. 39).

Apparently these contracts were accepted by her because Johnson went ahead with plans to get permission from the District for converting them to efficiencies "so he could get a better income out of the property" (J.A. 39-40) and advised her of his efforts in that connection. Furthermore, appellant called up Johnson's secretary to find out about the time of settlement (J.A. 40).

On October 12, 1954, she received a telephone call from Johnson asking her to come to his office the next day (J.A. 40). "He said that he would save money if [she] came to his office" "rather than to a title company for settlement" (J.A. 52-53). So, on October 13, she went to his office "for settlement" (J.A. 53), where occurred what she has variously described as a "so-called settlement" (J.A. 54, 76) and "a peculiar settlement" (J.A. 54). In any event, she signed a deed on that occasion to both properties (J.A. 42) and received from Johnson a promissory note for the full amount of the purchase price (J.A. 44).

Although claiming she had not intentionally signed a deed on October 13, 1954, Miss Osin's testimony thereon was, to say the least, conflicting. She first testified at the trial below that the deed which she signed had been partly covered by a piece of paper nearly letter size (J.A. 57-58) which covered the upper part of the document above the legal description of the property "and was wound around it" (J.A. 41-42). The lower portion was uncovered, she said, leaving exposed a description of the property and the words "and the said party of the first part covenants that she will warrant specially the property hereby conveyed, and she will execute such further assurances of said land as may be requisite." (J.A. 42-43). She wouldn't say "it was a little strip of paper" (J.A. 57-58) and didn't remember that she had testified at the criminal trial where Johnson had been convicted of false pretenses that it was covered with a little strip of paper and denied that she had so testified (J.A. 58) although, in fact, that had been her testimony (J.A. 75). She also testified that the paper was not folded in any way (J.A. 58), although she stated at the criminal trial that "he didn't have it open like that when he handed it to me, it was sort of closed over like this." (J.A. 59).

She testified further that she read "the first part of it" (J.A. 59) although at the criminal trial (J.A. 61), as well as at the civil trial, she testified that the upper part was

covered (J.A. 41). She said she read just the bottom part where she was supposed to sign and had not read either the description of the property or the warranty clause (J.A. 59), although she testified at the criminal trial that she read all of the deed that was uncovered which began at the description of the property (J.A. 77).

Finally, when pressed on the discrepancies in her testimony, she claimed that the deed was partially covered up at the criminal trial (J.A. 61) although evidently the whole document was uncovered since she had pointed to the specific portions that she claimed had been covered and the parts she admitted were uncovered (J.A. 61). Then she denied that she had testified about the deed at all at the criminal trial (J.A. 61-65) and claimed that all her testimony about it in the criminal trial was not about the deed, although it was conceded by her counsel that the "Government Exhibit No. 4", about which she testified at length at the criminal trial, was in fact the selfsame deed (J.A. 76). She claimed all her testimony at the criminal trial was about a sales agreement, although she had no recollection of seeing such an agreement at the criminal trial (J.A. 62), and although she admitted at both trials that she had signed the deed that was in evidence (J.A. 42, 77) and denied that she had ever signed a sales agreement (J.A. 53, 70).

Although she claims she didn't know she was signing a deed and thought she was signing a contract for sale (J.A. 43), she gave every indication of believing at that time and for some six months afterwards that she had in fact completed the sale of the property by deeding it to Johnson. She accepted promissory notes from Johnson which recited, and which she believed, were secured by deeds of trust (J.A. 55-56) and deposited them for collection at the First Federal Building Savings and Loan Association on the same day (J.A. 44), executing a collection agreement with that company at the same time (J.A. 44-45, 85, P. Ex. 6). Johnson made four monthly payments of \$85 on each note which were credited to her account at First Federal (J.A.

56, 85). She was notified of each payment (J.A. 56, 85). She handed over the keys of the properties to Johnson (J.A. 72) and after October 13, 1954, he received the rents (J.A. 55, 73). He did not account to her for the rents and she never complained about his not doing so (J.A. 73). She transferred the utilities which had been in her name prior to October 13 to Johnson and obtained back from both the gas and electric companies the deposits she had made (J.A. 56).

She made no further attempts to sell the property (J.A. 66-67) and in early February, 1955, went to Florida (J.A. 46) in accordance with her annual custom (J.A. 45), where she remained until at least the end of March, at which time she got a telephone call from the Washington police concerning the property (J.A. 46). She got the impression that Johnson was in trouble with the District Building Inspector for making improvements contrary to regulations (App. Exs. 7 and 8, J.A. 31-34). So, on March 30, 1955, she wrote to her real estate agent in Washington, Hohenstein Bros., and to the "Atty. for Hohenstein Bros." (App. Exs. 7 and 8 respectively, J.A. 31-34, 46-47), explaining the situation and reciting that at the "end of last year I sold my property at 1211 and 13 L St., N.W., to a Mr. Robert Johnson . . . I had taken back 1st trust on property payable 13th every month \$85.00 month each collected by First Federal Building and Loan. He had paid every note so far except Mar. which was due Mar. 13th (App. Ex. 7, J.A. 31). In Appellant's Exhibit 8 (J.A. 33) she states that "I hope you received my letter regarding the party I sold my L St. property to a Mr. Robert H. Johnson . . .

"I have taken back 1st trust on property . . . no down payment was made at time, but he called me up & told me he was ready to pay cash for Bal he owed, thats the main thing I'm interested in, . . . " Miss Osin also wrote to the Department of Occupations and Professions of the District of Columbia, stating that she had sold the property to

Johnson and also told an investigator for that Department on the telephone that she had sold the property (J.A. 93).

Meanwhile, Johnson on October 14, 1954, had recorded the deed from Miss Osin (App. Ex. No. 4, J.A. 29) and on October 12, 1954 had applied to Perpetual Building Association for a loan (App. Ex. No. 10, J.A. 78). It appearing that there were no prior encumbrances, a loan of \$5,500 was arranged for each property, promissory notes and deeds of trust were secured from Johnson, the deeds were recorded, and checks in the amount of the loans were paid to him on October 19, 1954 (App. Exs. 10-16, J.A. 79, 82). It is stipulated that Perpetual Building Association "is a purchaser for value without notice" (J.A. 78).

In December, 1954, Johnson executed second deeds of trust on each of the properties and received additional loans of \$1,650 on each from L. V. Glorius (J.A. 83-84, App. Exs. 21-24).

After the holders of the deeds of trust started foreclosure proceedings, this suit was brought.

SUMMARY OF ARGUMENT

The Court, as trier of the facts, found no evidence of fraud in the execution of a deed by appellant to one Johnson. The mere unsupported testimony of the grantor of such fraud would not in any case be adequate to impeach her duly executed deed, but because of improbabilities and lack of candor in her testimony, her story was completely unconvincing. Furthermore, appellant's claim that she did not know she was signing a deed was entirely inconsistent with all of her actions over a six month period. Accordingly, the court was quite justified in finding that appellant knowingly and intentionally signed the deed relying on Johnson's promise to record a deed of trust securing his promissory note for the purchase price.

Since the Court found that there was only fraud in the inducement, the grantor cannot reclaim his property from appellees, subsequent innocent purchasers for value.

Appellant admitted, in effect, that she acknowledged the deed but even if she denied it, her unsupported testimony could not impeach the notary's certificate. Furthermore, the deed was not invalid even if not acknowledged especially since it is not claimed that appellees are in any way implicated.

The minor amendment to the judgment after the filing of a notice of appeal was permissible, and certainly did no harm to appellant. Even if void, the original judgment would stand giving appellees precisely the same rights as the amended one.

The trial court properly struck appellant's demand for a jury trial since the relief sought in the complaint constitutes a classic appeal to the equity jurisdiction of the court which under the Constitution and laws of the United States is administered by the court without a jury.

ARGUMENT

I. The Question of Fact, Whether Appellant Knowingly Signed a Deed, Was Resolved by the Court as Trier of the Facts in Accordance With the Overwhelming Evidence.

The Court, as trier of the facts, was faced with the existence of an apparently valid deed, duly executed and acknowledged before a notary adequate to pass title to real estate to which the grantor had good record title. It was admittedly signed by the appellant (J.A. 42). Appellant sought to overcome the effect of this by claiming that she signed the deed when it was partially covered and in the belief that it was a sales contract. Since her testimony was the only evidence she offered on this point, the Court had the right to follow the rule as stated by this Court in *Ford v. Ford*, (1906), 27 App. D.C. 401, 408, that:

“The evidence, to impeach a deed, must be something more than the mere unsupported denial of a grantor. * * *”

But the Court did not, as it well might, simply reject the testimony as technically insufficient under the rule in *Ford v. Ford*, but properly scrutinized appellant's testimony to determine whether it was consistent and probable. It considered the various discrepancies in appellant's testimony as to the signing of the deed as more fully set forth in the Restatement of the Case (pp. 3 to 4). It gave weight to the fact that at one time appellant testified that the deed was folded over (J.A. 54) and again that it was not folded in any way (J.A. 55); at still another time that it was covered with a small slip of paper (J.A. 78); and again that it was covered by a letter size piece of paper wrapped around it (J.A. 57-58); at one time she had read a portion of the deed (J.A. 77) and at another that she hadn't read any portion of it (J.A. 59). The Court took into account the innumerable contradictions and complete lack of candor concerning her previous testimony (J.A. 60-65).

Under the circumstances, the Court was entirely justified in giving little credence to appellant's testimony and saying:

"Well, there was a variance, I thought in many respects. She testified one way at the criminal trial and another way at the trial of this case, and I have got to weigh her evidence." (J.A. 103)

"... I don't believe her testimony." (J.A. 104)

The Court was no more required to believe appellant's claim that she did not know she was signing a deed than it was required to believe the same claim of a man of ninety-seven in ill health in *Schaeffer v. Drury*, (1914), 42 App. D.C. 117, 119-120, where such a contention was "hardly consistent with his conduct", and where "His testimony is in many respects irreconcilable."

As this Court said in *Wynne v. Boone*, (1951), 88 U.S. App. D.C. 363, 365, 191 F.2d 220:

" * * * Oral testimony, dependent upon the 'candor and credibility of the witnesses', *United States v. U. S.*

Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746, was the crux of the case. The trial judge saw and heard the witnesses; we have done neither. Under Rule 52, we must give due weight to the opportunity which he thus possessed. We must recognize that the trial judge may disregard the testimony of a particular witness 'even in the absence of any direct conflicting testimony. He [the witness] may be contradicted by the facts he states as completely as by direct adverse testimony; and there may be so many omissions in his account of particular transactions, or of his own conduct, as to discredit his whole story. His manner, too, of testifying may give rise to doubts of his sincerity, and create the impression that he is giving a wrong coloring to material facts. All these things may properly be considered in determining the weight which should be given to his statements, although there be no adverse verbal testimony adduced.' *Quock Ting v. United States*, 140 U.S. 417, 420-421, 11 S. Ct. 733, 734, 35 L. Ed. 501."

Not only was the evidence here sufficiently "improbable, inconsistent [and] contradicted" in itself to take it out of the rule in *Stone v. Stone* (1943), 78 U.S. App. D.C. 5, 136 F. 2d 761, but all the surrounding circumstances which the Court was free to consider bear out the finding that "she signed a deed and knew she was signing a deed" (J.A. 105). Her claim manifestly cannot be reconciled with her obtaining back a promissory note (J.A. 55-56) which she deposited for collection (J.A. 44) and on which she received four payments over a period of five months (J.A. 56); her making no further effort to sell property (J.A. 66-67) which had previously been on the market (J.A. 38); her relinquishing any claim to the rents to Johnson (J.A. 73); her receiving back the deposits she had made with the utility companies (J.A. 56); her writing letters from Florida in which she stated that she had "sold" the property (J.A. 31-34, 46-47) and telling the investigator for the District of Columbia government the same thing (J.A. 93). These are all facts admitted by appellant and are clearly inconsistent with any interpretation other than an intention to

sign and deliver a deed to Johnson. The Court determined a factual question in accordance with all of the credible evidence.

II. Appellant's Authorities Are Not Applicable to the Facts.

In view of the Court's determination that there was fraud in the inducement rather than in the execution (J.A. 21), appellant's voluminous citations of authority from Oklahoma and Michigan are entirely irrelevant for those cases hold merely that forged instruments or ones obtained by fraud in the execution cannot be a basis for title even by an innocent purchaser for value. But this is all these authorities do hold and specifically they do not hold, as appellant claims, that any deed obtained under circumstances of false representation "is ineffective as a muniment of title even as to a subsequent purchaser in good faith, for value, without notice" (Br. 13). Indeed, the foregoing is actually a distorted quotation from *Pittsburgh Coal and Mining Co. v. Wright*, 122 Okla. 210, 253 Pac. 487, which, in fact, reads: "A forged deed is void, and the same though recorded in due form is ineffective, etc. . . ." Furthermore, the Court in that case refused to set aside the deed as forged on the basis of the same principles which have been enunciated by this Court, and which were followed by the court below. In the syllabus by the Court are the following statements:

"Truth of solemn recitals in notary public's certificate, executed as required by law, should not be set aside except on convincing evidence."

"Uncorroborated testimony of grantor that she had not signed deed held insufficient to warrant cancellation of deeds."

III. Where the Fraud Is in the Inducement, Subsequent Purchasers Without Notice Obtain Good Title.

The rules governing the not unusual facts of this case are of universal application. Neither Oklahoma, Michigan

or the District of Columbia are exceptions, and since there is a substantial body of pertinent law laid down by the Supreme Court and by this Court, it hardly seems necessary to go beyond this jurisdiction for guidance. They all agree that if a person is induced by fraudulent promises to execute a deed, such person cannot have recourse against an innocent purchaser for value.

The Court found that Johnson "... induced plaintiff to execute [a] special warranty deed by representing to her that he would execute in her favor and duly record a first deed of trust to secure the payment of the purchase price, when in fact he had no intention of recording such a deed of trust ..." (J.A. 18) and more informally stated:

"I think this lady believed Johnson, she wanted to make a good deal, and she signed the deed and thought he was going to place that trust on record. That's what I believe the facts are and I am going to find that." (J.A. 102) and

"... Even if I think he stole the property from her, he stole it by representing to her 'You give me a deed, and I will take it and file this deed of trust, giving you protection,' which she accepted, but he got the deed from her and didn't do it. Then he went and sold it to an innocent purchaser." (J.A. 103)¹

¹ These findings are entirely consistent with the theory on which the Criminal case against Johnson was presented (J.A. 94). Criminal No. 629-55. The Court took judicial notice of the record in that case (J.A. 96), wherein the indictment read in part: "... Robert H. Johnson, ... procured the execution and delivery by Mary Osin to the defendant of a conveyance of certain real property owned by Mary Osin ... , by falsely pretending and representing to the said Mary Osin that a deed of trust note payable to order of the said Mary Osin in amount of \$30,000.00 and bearing the name of Robert H. Johnson as maker, which note at the time and place aforesaid was delivered to the said Mary Osin by the defendant as consideration for said conveyance, was secured by a first deed of trust on the aforementioned property.

"The said pretenses and representations were not true and the defendant knew they were not true but the said Mary Osin, believing said pretenses and representations to be true and relying upon same, on or about October 13, 1954, within the District of Columbia, executed and delivered to defendant the aforementioned conveyance of real property."

The principle applicable to this situation was long ago stated by the Supreme Court in *Colorado Coal & Iron Co. v. United States*, (1887) 123 U.S. 307, 314, as follows:

“It is indeed an elementary doctrine of equity that where a grantor has been induced by fraud to part with the legal title to his property, he cannot reclaim it from subsequent innocent purchasers for value . . .”

The case is almost precisely like *Davison v. Morgan*, (1931), 60 App. D.C. 161, 50 F.2d 311, for there a deed was procured from the owner of property on the promise to record a deed of trust by the supposed purchaser when in fact there was no intention of recording it. Only the deed of conveyance was recorded and upon good record title a loan was procured. In refusing the original owner relief, this Court said (p. 163):

“In general it may be said that, if a situation arises which must result in loss to one of two parties, that one must suffer whose negligence has brought the situation about.”

The Court there cited and relied on its earlier decision in *Carusi v. Savary*, (1895), 6 App. D.C. 330, in which the maker of a deed negligently made it possible for the grantee to obtain and record it, although there was no intention to deliver it. This Court stated the problem (344):

“The question in this case, as we understand it, is which of two innocent persons should be required to suffer the loss occasioned by the wrongful act of a third person, the one who, by his negligence or inadvertence, has placed it in the power of such third person to perpetrate the wrong which otherwise would not have been perpetrated, or the one who, without any negligence on his own part, has been misled by the wrongdoer into a situation into which otherwise he would not have entered. And in the light of modern equity, of the overwhelming mass of modern judicial decision, and of what seems to us to be the dictate of natural justice, that question, in our opinion, can admit of but one answer.” (p. 344)

and answered it:

"That there was a great fraud perpetrated upon the complainant, is of course quite evident. But he was the victim of his own misplaced confidence, for which it is not just that he should make others suffer, who are wholly innocent . . . " (p. 346)

" . . . As between the immediate parties, equity will not permit those to suffer who have honestly confided in others and whose confidence has been betrayed. But much less will it permit them to retrieve their loss at the expense of those who, relying upon their actions or representations, have become the innocent victims of the fraud which only those actions or representations enabled to be perpetrated." (p. 348)

And similarly, in *McKinley v. Crawford*, (1932) 61 App. D.C. 123, 58 F. 2d 528, where the grantee fraudulently gave a deed of trust on property not owned by the grantor in exchange for a deed conveying property actually owned, this Court said (p. 125):

" . . . where one of two persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it."

This is but a particular application of "the principles which underlie equitable estoppel [and] plac[e] the loss on him whose misplaced confidence has made the loss possible." *National Safe Deposit Savings & Trust Co. v. Hibbs*, (1913) 229 U.S. 391, 397, affirming this Court's decision reported at 32 App. D.C. 459.

As Miss Osin stated when asked by the Court why she hadn't read the deed, or at least the part she admitted was uncovered, "I thought I was dealing with an honest real estate broker; . . . " (J.A. 59). One who relies on the representations of one he trusts rather than reads what should be read before signing may not avoid the instrument as this Court said in *Toledo Computing Scale Co. v. Garrison*, (1906) 28 App. D.C. 243 (p. 249):

"The single fact of imposition upon which he relies is that the plaintiff's agent represented the order to be a receipt. It appears, nevertheless, that the paper containing the general terms of the sale, which he admits, was presented to him for signature; that he was able to read it, and there was nothing done to prevent his doing so. His only excuse for not reading it is that he was in a hurry at the time. The mere fact that a contract presented for signature to one who is able to read and understand it fully, and who is not prevented from reading it by some artifice of the other party, is represented to amount to nothing more than a simple receipt, is not sufficient to avoid it on the ground of fraud. Something more is required to warrant such a finding."

If any avoidance is ever possible, it only applies between the parties. *Stern v. Moneyweight Scale Co.*, (1914), 42 App. D.C. 162.

IV. The Validity of Deed Would Not Be Affected Even If It Had Not Been Acknowledged.

Appellant claims that the deed from herself to Johnson was not acknowledged and that therefore it was a nullity but cites no authority for such a proposition (Br. 25-26). It is settled law that:

" "The unsupported testimony of a party to a deed, that he did not execute it, shall not prevail over the official certificate of the officer taking the acknowledgment. Public policy, the security of titles, the peace of society, demand such a rule and a strict adherence to it."

" "... The burden of proof is upon the appellant. The justice of the peace is an officer invested with high ministerial and judicial powers, one of the most important of which is the power to take and certify the acknowledgment of deeds and other instruments, upon the validity of which the titles to all real estate and vast amounts of personal property depend. If the verity of their acts can be impeached by the negative

testimony of the parties interested to destroy the deed, the most disastrous consequences might ensue.' ”

Ford v. Ford, 27 App. D.C. 401, 408, 410.

To the same effect are such Supreme Court cases as *Colorado Coal & Iron Co. v. U. S.*, (1887) 123 U.S. 307, 319, and *Howland v. Blake*, (1878) 97 U.S. 624.

But even if it were possible to challenge the certificate of the notary by the unsupported denial of a grantor, appellant's testimony actually admits the truth of the notary's certificate. Miss Osin stated that the notary was called in to the room while she was present to sign the deed as a witness to appellant's signature thereto (J.A. 43). Miss Osin thus at least tacitly admitted her signature and thereby acknowledged it as her act and deed. The notary's certificate on the back of the deed was therefore true and proper whether or not executed in the grantor's presence. Appellant suggests neither reason nor authority for her contention that the certificate must be executed by the notary in the presence of the grantor. Apparently she confuses requirement that the person acknowledging the signature appear before the notary with the theory she advances.

Attempts on the part of appellant to impeach the good faith of the notary as she does on pp. 23 and 25 of her Brief are wholly improper. Since she must know that the evidence on which she seeks to base it was excluded as to appellees. All conversations that the witness Rogers had with Johnson were excluded as hearsay as to appellees and admitted only as to Johnson (J.A. 91, 99, 103) and it was also stipulated that if two other witnesses were called their testimony would be the same and that the same ruling would be made as to conversations with Johnson (J.A. 99). Judgment was given Osin against Johnson (J.A. 25) and he has not appealed. Appellant has not complained of the exclusion of this evidence and has made no point of its

exclusion on this appeal. Accordingly, it is not open to this Court to consider it even if it had any probative value, which appellees deny.

But, in any event, the contention that an unacknowledged deed is void is unsupportable. This Court, in *Davison v. Morgan*, (1931) 60 App. D.C. 161, 50 F.2d 311, under circumstances very like those claimed by appellant here, held that between parties an unacknowledged deed is valid.¹ In that case:

“ . . . Appellant and her husband were persuaded to sign the deed of conveyance to Morgan, and deliver it together with the deed of trust to Cissel to be recorded. Cissel pretended to be a notary public, and professed to take the acknowledgment of the grantors in the deed. Thereupon Cissel withheld from record the deed of trust securing the \$9,000 purchase-money note due to appellant, and by means of the deed of conveyance procured a loan of \$5,500 from Wilcox, Hane & Co. upon a note and deed of trust executed by Morgan and his wife upon the property. In this transaction the records were examined by a title company, and the title to the property was of course found to be in Morgan's name and free of incumbrance, and the loan was made upon that assurance. There is no evidence tending to prove knowledge of the fraud of Cissel and the Morgans upon the part of any of the other parties.”

But beyond holding that there was a valid deed between the parties, the Court said:

“ . . . We are also of the opinion that the evidence in the case does not implicate the parties taking or holding the deed of trust from Morgan to secure the \$5,500 loan.”

Thus, the Court clearly implied that the purchasers, being innocent, were not affected by the possible defect in the acknowledgment. Therefore, it seems evident that even if

¹ In this, it followed its earlier decisions in *Munsey Trust Co. v. Alexander, Inc.*, 59 App. D.C. 369 (1930), 42 F.2d 604.

the facts were as appellant claims, the rights of the parties would remain as the lower court found them to be.

V. The Amended Judgment Is Valid.

Appellant claims that the Court erred in amending the judgment after an appeal was noted (Br. 7). This correction would seem to be permissible under Rule 60(a) of the Federal Rules of Civil Procedure since an examination of the Judgment (J.A. 22) and the Amended Judgment (J.A. 25) shows that the only correction is of what amounts to a clerical error. The original judgment cancelled the deed from Osin to Johnson but also permitted Osin to elect a reconveyance by Johnson. To correct this apparent contradiction and conform the judgment to the Court's intention of giving appellant a complete option either to avoid the deed or to obtain reconveyance, one paragraph of the judgment was slightly amended. If section (a) of Rule 60 does not control, section (b) does. No authority is cited to suggest that such a change is not permissible after the filing of a notice of appeal. Cf. *Smith v. Pollin*, (1952) 90 U.S. App. D.C. 178, 179-80, 194 F. 2d 349.

In any event the amendment was made only for appellant's benefit and no change whatever was made in any portion of the judgment relating to any of the appellees. So if the amended judgment is a nullity, as appellant claims, the original judgment is effective to give the appellees precisely the same relief granted by the amended judgment. Appellant can show no injury.

VI. The Court Properly Struck Appellant's Demand for a Jury Trial.

The complaint in this case sounds wholly in equity so that the trial was properly by the court without a jury. Rule 38(a) of the Federal Rules of Civil Procedure provides that:

“The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a

statute of the United States shall be preserved to the parties inviolate."

While section (b) authorizes a jury trial upon demand "of any issue triable of right by a jury."

The Seventh Amendment guarantees the right to trial by jury "in suits at common law, where the value in controversy shall exceed twenty dollars . . ."

Accordingly, the court must determine from the pleadings whether equitable or legal relief is sought, and when it is evident that the relief asked is equitable in nature, a demand for trial by jury is properly denied. *Canister Co. v. Leahy* (C.A. 3, 1950), 182 F. 2d 510; *Bereslavsky v. Kloebe* (C.A. 6, 1947), 162 F. 2d 862, certiorari denied 332 U.S. 816; *Johnson v. Gardner* (C.A. 9, 1950), 178 F. 2d 114; *Timmons v. U. S.* (C.A. 4, 1952), 154 F. 2d 357; *Orenstein v. U. S.* (C.A. 1, 1951), 191 F. 2d 184; *Humble Oil & Refining Co. v. Sun Oil* (C.A. 5, 1951), 190 F. 2d 191, Cert. denied 342 U.S. 920; *Upjohn v. Schwartz* (D.C. N.Y. 1953), 117 F. Supp. 292; *Telechron, Inc. v. Parissi* (D.C. N.Y. 1953), 108 F. Supp. 897, mandamus denied 203 F. 2d 454, reversed on other grounds 349 U.S. 46; *Taylor v. McKeever* (D.C. N.Y. 1940), 1 F.R.D. 565.

The complaint seeks injunctive relief (J.A. 4) which is, of course, purely equitable and will not justify a jury trial. *Soap Corp. of America v. Reynolds* (C.A. 5 1950), 178 F. 2d 503; *Fleming v. Peavy-Wilson Lumber Co.*, 38 F. Supp. 1001 (D.C. La. 1941); *U. S. v. Mesna* (D.C. Minn. 1951), 11 F.R.D. 86; *Hirsch v. Glidden Co.* (D.C.N.Y. 1948), 79 F. Supp. 729. It also asks for an accounting (J.A. 5) which is also equitable and an issue properly triable by a court without a jury. *Taylor v. McKeever* (D.C.N.Y. 1941), 1 F.R.D. 565; *Bercovici v. Chaplin* (D.C.N.Y. 1944), 3 F.R.D. 409, modified 7 F.R.D. 61; *Dottenheim v. Emerson Electric Mfg. Co.* (D.C.N.Y. 1947), 7 F.R.D. 343; *Tynan v. R.K.O. Radio Pictures* (D.C.N.Y., 1948), 77 F. Supp. 238. The complaint also seeks the cancellation of an instrument, an

action equitable in character and only to be performed by a court, and therefore not a basis for a jury trial. *City of Morgantown, W. Va. v. Royal Ins. Co.*, (C.A. 4, 1948) 169 F. 2d 713; affirmed (as unappealable interlocutory order) 337 U.S. 254; *Connecticut General Life Ins. Co. v. Candimat* (D.C. Md. 1949), 83 F. Supp. 1; *Bowie v. Sorrell* (D.C. Va., 1953), 113 F. Supp. 373.

In short, appellant has made a virtually classical appeal to the equitable jurisdiction of the court for which trial by jury is not permitted under the Constitution or laws of the United States. Citations (Br. 8) holding that issues of fraud are triable to a jury are in no way apposite, since determination of the equitable or legal nature of the case is based on the type of relief sought and not on the underlying facts of the case.

It was therefore proper for Judge McGuire, when the case was sent to him for trial, to strike the jury demand (J.A. 17). He was not bound to perpetuate error by any theory of "the law of the case", for as this Court has said in *Marks v. Frigidaire Sales Corporation*, (1931) 60 App. D.C. 359, 54 F. 2d 974:

" . . . prior interlocutory rulings . . . are not conclusive on the trial judge who has the ultimate responsibility, as the case is finally presented to the trial court for decision."

See also *Gatewood v. U. S.*, (1953) 93 U.S. App. D.C. 226, 230-231, 209 F. 2d 789; *U. S. v. Ceferratti* (1953), 91 U.S. App. D.C. 297, 301, 202 F. 2d 13, 16, *cert. denied* 345 U.S. 907; *Davis v. Davis*, 68 App. D.C. 240, 243, 96 F. 2d 512 (1938); *McNeill v. Jamison* (Mun. Ct. of App., D.C. 1955), 116 A. 2d 160, 161. Appellant's authorities are not contra or even in point (Br. 8).

CONCLUSION

In view of all the facts in this case, the court below was entirely correct in concluding that there was no fraud in the execution and that therefore the innocent purchaser of value without notice should be protected. The other points raised by the appellant are completely insubstantial.

Respectfully submitted,

DANIEL W. O'DONOGHUE

ROSS O'DONOGHUE

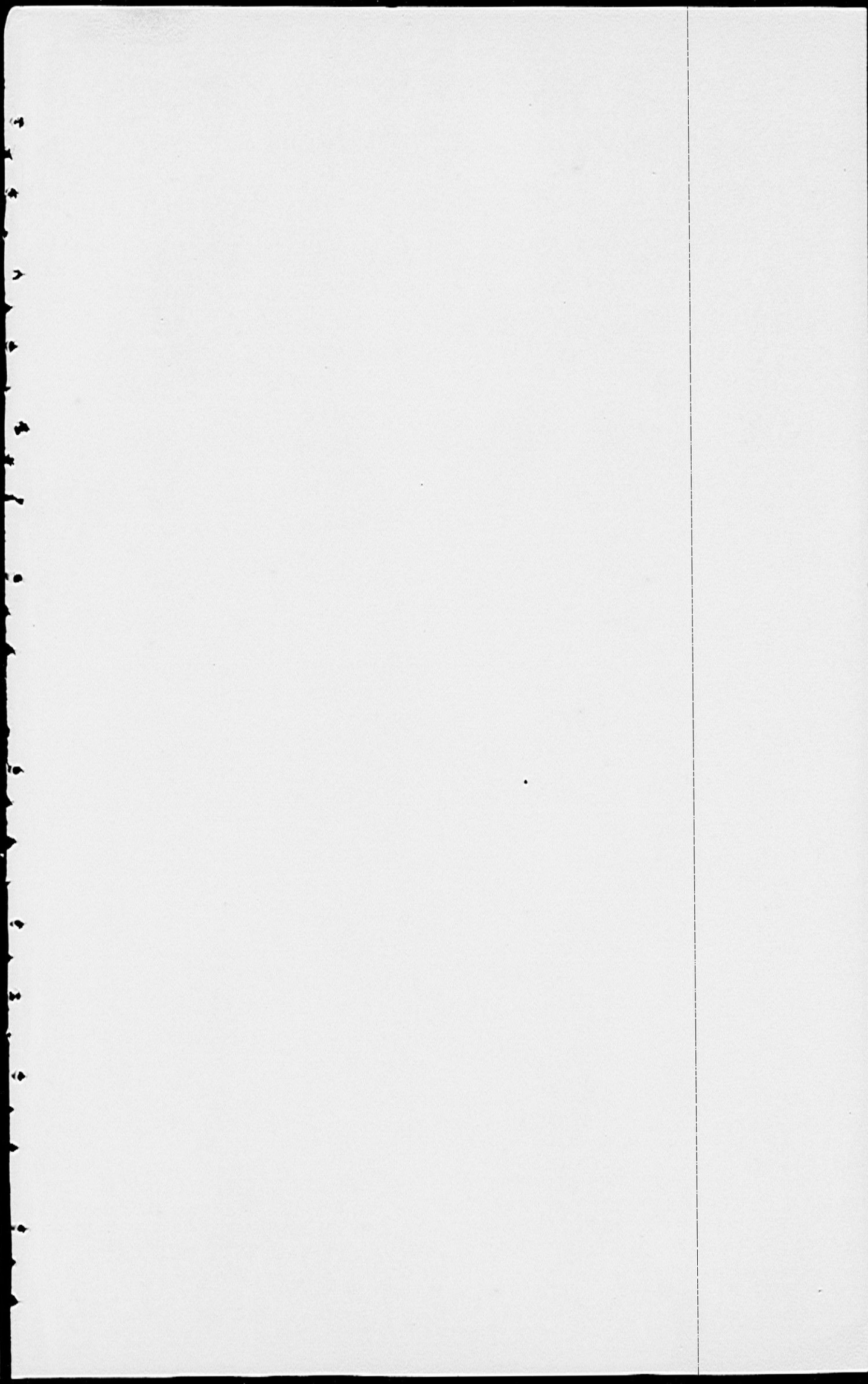
SAMUEL SCRIVENER, JR.

DAVID S. SCRIVENER

*Attorneys for Appellees,
Perpetual Building Associa-
tion, Samuel Scrivener, Jr.,
and Junior F. Crowell*

MARK P. FRIEDLANDER

*Attorney for L. A. Sinclitico,
Thomas Laughlin, Leo V.
Glorius and Bernard E.
Sherman*



BRIEF FOR INTERVENOR-APPELLEES

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 13,432

FILED NOV 6 1956

MARY OSIN, Appellant

Joseph W. Stewart
CLERK

v.

ROBERT JOHNSON, et al., Appellees

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

George Bronz,
Attorney for Intervenor-Appellee,
Victor H. Umbricht
839 - 17th St., N. W.
Washington 6, D. C.

Maurice A. Guervitz,
Attorney for Intervenor-Appellee,
Yorguy H. Hakim
507 Denrike Building
Washington 5, D. C.

November 6, 1956

No. 13,432

**INTERVENOR-APPELLEES' STATEMENT
OF QUESTION PRESENTED**

In the opinion of intervenor-appellees, the question presented with respect to their claims herein is:

Is the lien of a judgment on real property, pursuant to D. C. Code, Section 15-103, superior to appellant's claim, which was unrecorded at the time the judgment liens attached.

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UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 13,432

MARY OSIN, Appellant

v.

ROBERT JOHNSON, et al., Appellees

**APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

COUNTER-STATEMENT OF THE CASE

Victor H. Umbricht, Intervenor-Appellee, secured a judgment against appellee Johnson on March 31, 1955, in the Municipal Court for \$1,475, with interest and costs. On the same date, March 31, 1955, he docketed a certified copy of said judgment in the office of the clerk of the District Court. J. A. 6, 20.

Yorguy H. Hakim, Intervenor-Appellee, in a suit in the District Court, attached the real estate here in suit on February 24, 1955, and secured a judgment against appellee Johnson on May 4, 1955, in the amount of \$4,500, with interest and costs. J. A. 8, 20.

SUMMARY OF ARGUMENT

D. C. Code 15-103 makes a judgment lien superior to an unrecorded claim to real property.

ARGUMENT

D. C. Code, Section 15-103 provides:

"Every final judgment at common law . . . for the payment of money from the date when the same shall be rendered, every judgment of the municipal court when docketed in the clerk's office of the District Court . . . shall be a lien on all the freehold . . . estates, legal and equitable, of the defendants bound by such judgment . . . in any lands, tenements, or heriditaments in the District . . ." See also D. C. Code, Section 11-755(c).

This Court construed this statute, in American Savings Bank v. Eisminger, 35 App. D. C. 51 (1910), to mean that the judgment creditor's lien was superior to any unrecorded claim on real estate. The Court said:

"Having no notice of any outstanding title or interest at that time, the lien of the judgment creditor became fixed, and is superior to such unrecorded title or interest. . . This case is . . . the necessary result of a statute declaring a sound rule of public policy that must be given effect. The hardship is worked not by the statute, but by the neglect of a party to avail himself of the simple means which the statutes provide for giving notice of titles and incumbrances." (At pages 56-57.)

This case was followed and reaffirmed in Atlas Portland Cement Co. v. Fox, 49 App. D. C. 292, 265 Fed. 444, 266 Fed. 1021 (1920).

The liens of intervenor-appellee Umbricht and of intervenor-appellee Hakim in the real estate are therefore superior to any unrecorded claim of the appellant.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

George Bronz,
Attorney for Intervenor-Appellee,
Victor H. Umbricht
839 - 17th St., N. W.
Washington 6, D. C.

Maurice A. Guervitz,
Attorney for Intervenor-Appellee,
Yorguy H. Hakim
507 Denrike Building
Washington 5, D. C.

November 6, 1956

REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,432

MARY OSIN,

Appellant,

v.

ROBERT H. JOHNSON, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED NOV 13 1956

Joseph W. Stewart
CLERK

Ward B. McCarthy
Thomas B. Heffelfinger
W. Cameron Burton
John A. Kendrick

1005 Investment Building
Washington 5, D. C.

Attorneys for Appellant

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 13,432

MARY OSIN,

Appellant,

v.

ROBERT H. JOHNSON, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANT

QUESTION WHETHER APPLICANT
KNOWINGLY SIGNED A DEED

On page 8 of their brief, Appellants attempt to point out inconsistencies in Appellant's testimony as to the signing of the deed and set forth what they consider to be discrepancies.

However, a reading of the plaintiff's direct and cross-examination shows that the plaintiff's testimony was consistent on the essentials, that is, that she had been shown a sales contract and there had been no discussion between herself and Johnson as to her executing a deed or Johnson executing and filing a deed of trust to secure the promissory note.

It should be further pointed out that the alleged inconsistencies relate only to the manner in which the sales contract was covered when passed by Johnson across the desk for her signature. It should further be called to the court's attention that while the same exhibits were used in the civil case as were in the criminal case they received different numbers.

We submit that under the decision of this Court, in Stone v. Stone, 78 U.S. App. D.C. 5, 36 Fed. 2d 761, the plaintiff's testimony was neither irrelevant, inconsistent nor contradictory.

What we have to say here fully answers the contentions of the appellees at page 10 of their brief, to the effect that the fraud was in the inducement whereas, a fair reading of all the testimony is that Johnson's fraud was in the execution.

LACK OF ACKNOWLEDGMENT OF DEED

Appellees in their brief, pages 14-17, take the position that the validity of a deed would not be affected even if it had not been acknowledged, relying upon the opinion of this court in the Davison v. Morgan, 60 F.D.C. 161, 50 Fed. 2d 311, which case cites Munsey Trust Company v. Alexander, Inc., 59 App. D.C. 369, 42 Fed. 2d 604.

In the instant case, on October 13, 1954, Osin had no intention of deeding the property to Johnson and her signature to the deed was fraudulently obtained. Therefore, Osin did not deliver a deed to the property to Johnson.

An examination of the testimony of the plaintiff both on direct and cross-examination discloses that on October 13, 1954 there was no conversation between Osin and Johnson that Osin was deeding the property to Johnson, that she execute a deed or that she deliver to him a deed. Furthermore, there is no testimony that Johnson promised Osin that he would record a deed of trust in her favor, to secure the note which he delivered to her.

Factually, the Davidson case differs materially with the case now before this court. In the Davidson case, "Appellant and her husband were persuaded to sign the deed of conveyance to Morgan, and deliver it together with the deed of trust to Cissel to be recorded. Cissel pretended to be a Notary Public and professed to take the acknowledgment of the grantors in the deed. In fact, however, he was not a Notary but afterwards deceived a Notary into signing such an acknowledgment to the deed."

Thus it will be noted that the Davidsons intended to and did sign the deed and deliver it to Morgan through their agent Cissel.

This Court's attention is directed to the last three paragraphs of the Davidson opinion to the effect that the Davidsons were estopped by their negligence in delivering their deed to Cissel thereby making the fraud. This becomes important because Osin neither intended to sign or acknowledge a deed nor intended to deliver one.

The appellees, in their brief at page 15, contend that appellant in her brief did not raise the question of the trial court excluding, as to them, the testimony of the witness Rugers with Johnson when he implicated his associates at the City Mortgage Company in the fraud as being hearsay to the appellees.

The above ruling was clearly erroneous because the appellees are the direct privies of Johnson in their claim to title. This becomes most patent when the court considers that the appellees were pleading record title in Johnson and a deed which is not properly acknowledged under the recording statutes is a nullity and is notice to no one.

THE INTERVENORS

In their brief the Intervenor failed, as they did below, to advance any reasons sufficient in equity that their judgment against Johnson should be held superior to Osin's rights in the property.

Respectfully submitted,

Ward B. McCarthy

Thomas B. Heffelfinger

W. Cameron Burton

John A. Kendrick

1005 Investment Building
Washington 5, D. C.

Attorneys for Appellant